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*Elihu Lewis*

1798-1871

From a mezzotint engraving by Doney,  
after a daguerreotype by Plumbe, in  
*The United States Magazine and  
Democratic Review*, of New  
York, of April, 1847.

# The Life of Chief Justice Ellis Lewis 1798-1871

Of the First Elective Supreme Court of Pennsylvania

BY

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“The Life and Speeches of Thomas Williams, 1806-1872”; “The Life and  
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Historical Association.

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By

BURTON ALVA KONKLE

TO  
HON. HAMPTON L. CARSON, LL.D.





"For they are two things,  
wisdom and law together;  
and therefore it is said: nobody  
is a judge through learning;  
although a person may always learn,  
he will not be a judge unless there be  
wisdom in his heart; however wise  
a person may be, he will not be a  
judge unless there be learning with the wisdom."

—Ancient Laws and Institutes of Wales.

Book VIII, Chap. XI, p. 493.



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## Preface

The author's successive studies in American historical materials, based largely on Pennsylvania sources, have been a natural growth, and have sprung from his belief in the wealth and importance of those sources to the student of our national history. He has proposed to himself no artificial series, but has merely sought to explore what has seemed to him important though neglected fields, and has chosen to present what he has seen—phases or movements—under the form of a "Life" of a carefully chosen and characteristic figure in the midst of them.

The struggle over the Pennsylvania constitution of 1776 was the chief subject of my *The Life and Times of Thomas Smith, 1745-1809*, and the rise of Whig and Republican movements in the Keystone State was the main theme of *The Life and Speeches of Thomas Williams, 1806-1872*. It had been my hope to next present the great colonial work for constitutional liberty wrought by David Lloyd; but the study of Whig and Republican movements in my *Williams* showed the desirability of presenting the counterpart of those movements—the Democratic phase—in the "Life" of Buchanan's warm friend and nearly life-long counsellor, Chief Justice Ellis Lewis, of the state Supreme Court, for almost exactly the same period. The Lewis material, with which I had long been familiar, also furnished a unique "journey" through almost the whole career of both colony and commonwealth down beyond the Civil War, and especially made necessary treatment of that most interesting phenomenon in Pennsylvania, the movement for an elective judiciary. If Chief Justice Lewis had been a jurist only, the author would have felt no mission to present his career, but before he went on the bench he was a great power in Democratic counsels, and seldom wholly lost touch with

the ablest leaders of that party during the rest of his life, as his correspondence indicates.

The volume might have been written as a "memorial," and well worthy of that treatment is the career of this popular jurist; but, fortunately or unfortunately, although frequently invited to do so, the author has no desire to write a work of that kind, nor has he ever done so, or is he likely to do so. He has deliberately chosen these studies in the spirit of monographic work for the future historian. His method causes him to present a *Williams* or a *Lewis*, with sympathy, but without approval or disapproval; he merely desires his readers to see the characters and movements at first-hand so far as is possible without going personally to the original records, resting in the calm assurance that the reader prefers to exercise the judging function himself. Personal opinions of the historian, while interesting, are not so much the texture of history as they once were; they have gone the way of the editorial, in some degree.

Furthermore, the author believes that the influence and significance of movements within Pennsylvania from 1681 until after the Civil War are more considerable than has been generally conceded. This has been due to many causes: the difficulty many have in understanding the Quaker and his mystic attitude; the complexity of the state's life; the varied degrees of unity or homogeneity at different periods; the tendency of the Quaker not to present his own exploits, individually or collectively; the buffer position the state has always held between sections, which has compelled her to be a mediator, peacemaker, compromiser, solvent of national difficulties, and deviser of practical ways and means; not to mention very many more quite as important. It has been said that Pennsylvania collects and New England publishes, which may be another way of stating the matter. At any rate it has resulted, the author believes, in general historians, who are compelled to work so largely from meagre second-hand sources, not understanding Pennsylvania sufficiently and not recognizing adequately the claims of her unique position in national history. A distinguished historian was once asked to write a history of Pennsylvania, and he replied that it was not yet time for that—there must be a great deal of monographic work first. The point is further illustrated, for instance, in her colonial history: a distinguished New England historian recently



had occasion to make a fresh, first-hand study of Penn's time and expressed his belief that he had run upon one of the greatest figures in American colonial history and sought to know more about him. He was undoubtedly right, but how many readers of national history have seen David Lloyd given that position before? Undoubtedly every student who has gone to the original records, rather than to the second-hand and partisan pages of men like Proud, and gone to them in the spirit of first-hand research, has seen David Lloyd looming up scarcely second to Penn himself, if he was second. The same thing is true of movements, and it is the author's desire to aid in a monographic way along these lines, sometimes with men who are strong, and again with men who may be called great.

I desire at this point to reply to numerous inquiries regarding my relation to certain other works which I have long had in hand. The *Life of Chief Justice Lewis* made plain to me the strategic importance of the rise and fall of Democracy in Pennsylvania, because of its relation to the nation, and again postponing publication of *David Lloyd* (on which I was grateful enough to have more time), I undertook a "Life and Times" of Pennsylvania's candidate for Vice-President against Van Buren, William Wilkins, which will be in press during the present year. My years of study of Lloyd was paralleled by a like study of a figure of even greater power as a constitution-maker, namely, James Wilson. A *Life of Wilson* was so considerable a project that I had placed it some time in the future. The appreciation which I found here and there for this pre-eminent statesman, however, in my efforts to have the state and nation join in honoring his memory in the removal of his remains to Christ Church, Philadelphia, was so genuine, so widespread and so abundant that I have yielded to the urgency of my friend, Dr. S. Weir Mitchell, and others, and arranged to undertake a full and authoritative *Life and Works of James Wilson* during the present year. The preparation of a *Life of Lloyd* will follow immediately after that of Wilson.

Space forbids acknowledgment of the many courtesies received during the preparation of this work, but one cannot pass by the thoughtfulness and encouragement of Miss Josephine Lewis, of Philadelphia, the officers of the Historical Society of Pennsylvania, especially Miss Wylie of the department of manuscripts, the officers of the Law As-

sociation of Philadelphia, those of the State Library and the New York Historical Society, Mr. Heverly, of Towanda, Pa., and others whose names occur elsewhere in the text or footnotes.

BURTON ALVA KONKLE.

Swarthmore

January 29, 1907.

## CHAPTER I

### HIS WELSH ANCESTORS FOLLOW PENN, AND THREE GENERATIONS HELP TO BUILD UP THE NEW COMMONWEALTH

1680

If the year 1680 and her sister years on either side were as the Three Fates to Britain in certain respects, even more truly were they as the Three Graces to many of the British people in the matter of liberty and law. The term "Whig" came, in that year, to mean something very definite to the ears of the King who needed no parliament, Charles II; and if the year before brought great relief to the persecuted dissenters in the hardly won *habeas corpus* act, the year following 1680 brought to many their heart's desire, in the possibility of escape to a land of promised freedom, under the guidance of the son of King Charles' late Admiral, Penn, even though the "grant" was in payment of a long-standing debt.

For a burning, spiritual revolt was abroad over more than one land, and new flames enkindled new fires as they leaped from heart to heart. Leaders, like George Fox, of the Quaker element, were everywhere encouraging the persecuted. "Now I had some Inclination," he writes during one of these years, in London, "to have gone into the country to a Meeting: But hearing that there would be a Bustle at our Meetings, and feeling a great Disquietness in People's Spirits in the City about choosing Sheriffs, it was upon me to stay in the city, and go to the Meeting in *Gracious-street* upon the First-day of the Week. *William Penn* went with me, and spake in the Meeting: and while he was declaring the Truth to the People, a Constable came in with his great staff, and bid him give over, and come down: but *William Penn* held on, declaring Truth in the Power of God. After a while the Constable drew back: and when *William Penn* had done, I stood up, and declared to the People, 'the

everlasting Gospel, which was preached in the Apostles' days, and to *Abraham*; and which the church in the Apostles days did receive, and came to be Heirs of.'"<sup>1</sup>

Such meetings dotted all Britain and Ireland, and even the continent and the colonies, and nowhere was soil more hospitable to them than in the beautiful mountains of western Wales, where "towering Cader Idris" overlooked the waters of Cardigan Bay, not a half-dozen miles from its base, and even peered beyond the Irish Sea to the more than twenty-league-distant coasts below Dublin.<sup>2</sup> Happily, one may look in upon one of these meetings and witness an incident of much significance, but it shall be approached from picturesque Lake Bala, whence the beholder may view the crown of this same Cader Idris in the skies more than a dozen miles to the southwestward. For the way to Dolgelly—otherwise "Hazel-dale"—passes the water-shed between the Dee and Winion, and "here," says an observing artist who once traversed it, "commences a long and gradual descent to Dolgelly, which at every step becomes more and more magnificent, as the road follows the course of the Winion as it foams through a spreading region of wild forest, and the stern and noble outline of Cader Idris bursts upon us like an enormous rampart, almost striding across the distant vale, its long ridges and perpendicular precipices successively developing themselves as we near the little gray town of Dolgelly, above which they tower with a grandeur superior to any other mountains in Wales. Dolgelly is deliciously placed in the lap of this woody valley, surrounded with heights gradually rising from it in almost Alpine character and variety, and full of charming passages of wood and brook scenery—an excellent headquarters for numerous pleasant excursions. Travellers are generally severe upon the Welsh towns, and Dolgelly, in particular, has come in for much reproach for its irregularity and dinginess; but the former is a picturesque quality in a mountain town, and the latter, produced by the gray stone and slate of the materials, after all, is more pleasing to the eye than

<sup>1</sup> Fox's Journal, Vol. II, pp. 375-6, under date of 1682. Penn was then thirty-eight years of age and Fox was in his prime. The Italics are only a typographical fashion of that day.

<sup>2</sup> Cader Idris ("Seat of Idris") is the third mountain in height in Wales. A Topographical Dictionary of Wales, by Samuel Lewis, 1833.

would be modern garish brick or plaster; such at least would be the opinion of an artist. The principal inn is the 'Golden Lion,' the garden of which opens on the green, affording a delightful walk. The shallow river, passing under a picturesque ivied bridge, sweeps rippling on one side of this grassy area, under a wooded bank, above which is seen a rural Gothic school of recent erection; on the other is the town and church, with numerous neat country houses, finely placed among the hills, which ascend stage by stage to the base of precipitous Cader Idris. The facetious Fuller, who wrote more than a century ago, gives a singular enigmatical account of Dolgelly.

- '1. The walls thereof are three miles high.
2. Men go into it over the water; but
3. Go out of it under the water.
4. The steeple thereof doth grow therein.
5. There are more alehouses than houses' "——

the first referring to the mountains, the second to the entrance bridge, the third to an artificial elevated waterway for a mill-wheel opposite, the fourth to the fact that the town bells were in a yew-tree, and finally, that in fair-time almost every house sold Welsh ale.<sup>1</sup>

Nor would any impression of this parish be adequate that failed to include the glamour of nobility that hovered over this part of the shire of Merioneth through the house of Nannau, descendants of Prince Cadwigan, of ancient Powys of the upper Dee and Severn.<sup>2</sup> For not more than two miles to the north of Dolgelly, as the crow flies, stands the vine-clad walls of Nannau, the seat of the ancient family of Vychan or Vaughan from the middle centuries of our era down to 1859, when the direct line ceased with the passing of Sir Robert. Prince Cadwigan, fifth in descent from King Howell, the famous law-giver of Wales, was himself Lord of Nannau, and tenth in descent from him followed another Howell, Lord of Nannau, one of

<sup>1</sup> "The Tourist in Wales," published by George Virtue, in 1857, and written by the artists, Bartlett and Willmore, who have so beautifully illustrated it. "Dolgelley" is the spelling used in Lewis' Topographical Dictionary.

<sup>2</sup> In the Ancient Laws and Institutes of Wales, those of Howell, the Good, Book VIII, Chap. XI, p. 492, it says: "The word of a man of Gwynedd is not to be credited against the word of a man of Powys, nor that of a man of Powys against a man of Gwynedd, nor that of a man of South Wales against a man of Powys or Gwynedd: for there are those three unconnected countries in Cymru"—the native name for Wales.

whose grandsons (a grandson through his son Griffith) passed out of his ancestral halls, because of Britain's law of primogeniture, and entered into the great middle classes of the realm, enriched with noble blood as they have been since the first promulgation of that law. This grandson, John, made him a home in this parish of Dolgelly and gave his son a name that was destined to become a family name—when such an institution began to be adopted—in both home-land and colonies. Two generations were to pass, however, before Lewis—for such was the name—was to have a descendant bear it again.<sup>1</sup> This Lewis *ap* Robert, i. e., son of Robert, had a sister, Margaret, who became the wife of a man of great strength of character both there and over-sea, named Rowland *ap* Ellis, or, as he used it later in life, Rowland Ellis; for, it may be observed, when a family name began to be the fashion, there was much confusion in method, for some would have made it Ellis Rowland; or, if necessary, have used the grandfather's instead of the father's name. So it was that Lewis *ap* Robert became known, not only as Lewis Robert, but Lewis Owen and Owen Lewis as well.<sup>2</sup>

It was a son of this Lewis, who was born during the triad of years about 1680, and was given the name Ellis Lewis, who finally determined the family name, especially in the new lands beyond the sea, and particularly, as a boy of about a dozen years, made so notable one of the many meetings that dotted western Wales at this period that an account of it has been handed down to this generation. "The 30th of the 4th month, 1690, upon the first day of the week," says an account found among the papers of a descendant, and signed by Rowland Owen, "we having assembled ourselves together according to our usual manner at the house of Lewis Owen, in the parish of Dolgelly, Merionethshire, in Wales, to wait for the appearance of God, in which we have comfort and power, beyond every other power, of

<sup>1</sup> The Pedigree of David Lewis, Esq., of Philadelphia, prepared by P. S. P. Conner, member of the Pennsylvania Historical and Genealogical Societies, 1894. Lewis had two sons, Owen and Rees, and it was the grandson of Owen (through Robert) who again bore the name Lewis.

<sup>2</sup> The author is assured by several Welsh students that this confusion was common, and it seems to be in keeping with the family tradition indicated below. Both are given, and the reader may choose for himself.





NANNAU HOUSE  
near Dolgelly, Wales

From a photograph in possession of Miss Josephine Lewis, Philadelphia





which we were made witnesses according to our measure, and we being upon the day above mentioned met together at the same place, and those that used to bear a public testimony amongst us, having taken their liberty, and after a considerable time there was something like a vail not removed, and as a covering not moved away, and in this condition I was moved to encourage my friends to labour and take Christ Jesus, his advice to strive to enter in at the strait gate, which leadeth into the kingdom of freedom, and to seek for the fountain which Christ spake of that would be in them, springing up into eternal life—and yet there was a stop remaining as to our speech at that time, for it was an unusual thing to the people, and I waited and found ease to my mind. But after some time it was manifested unto me that the Lord would raise his own seed into dominion some way or other—but I knew not what way, and in earnestness of supplication and prayer and tears springing up amongst us, from that Immortal Seed, and a child amongst us, being but between twelve and thirteen years of age (which was Ellis Lewis, the third son of Owen Lewis), he having wept and groaned a long while amongst us, at last broke out into words in the English language, which he was not perfect in. And he praised the name of the Lord God of Heaven and earth, who he said had opened his heart amongst us this day—and in filling the hearts of his little ones, his babes, who is comforting and nourishing them one day and time after another. And often he mentioned the Almighty, which he said had opened my heart amongst us this day—so that it was not the words we made most observation of, but the life and heavenly authority that went along with the words. And the life sprang and ran amongst us to the comforting of our hearts, both old and young, great and small, so that the living springs opened in our hearts. And these living streams made a great river, which made glad the city of God. And many did admire and wonder that heard the child's voice, but those that knew not the living words from whence the true words do proceed, were ready (I thought) to say with those that said of Christ's Apostles—'they were full of wine.' But we are

of the Apostle Peter's mind and judgment, who said that the Lord God should in latter days pour forth his spirit upon all flesh, as it is signified by the mouth of his servant Joel—and we are witnesses of that Scripture, which saith that through the mouths of babes and sucklings praises shall be perfected unto the Lord, even by them that suck at the breast of God's everlasting consolation, who are in their spirits enlightened to see the goodness of the Almighty in the land of the living. And I have not found even in my mind, until I had written these few lines, that they might be in remembrance for the generations after us, to see and understand how good and fatherly the Lord was to us, and how his living witness hath moved in our hearts, and upon the hearts of the youth amongst us, so that just witness hath been quickened in our hearts, that doth at all times testify against evil and corruption. And we have spent that season to the comfort of our poor souls, and in some measure to the praise, honour and glory of the Lord our God, who is the author of all our mercies, unto whom for this reason, and all his goodness to us, be thanksgiving, and unto his blessed name be it given, henceforth and forever more. Amen, saith

“ROWLAND OWEN.”

Something over six months after the meeting above described, the boy, who was then visiting in Newington, a short distance south of London, wrote for the meeting at that suburb, “A Little Offering offered to you, my brethren in brotherly love, by a child who came up to see how it fared with you, my honourable brethren.

“This is the word of the Lord to you, fathers and young men—quench not the spirit, neither despise prophecy, lest the Lord should smite you with dryness and barrenness. For the spirits of the Prophets are to be subject to the Prophets, and we all, as members that are useful, are to be subject to Christ, our head, and one to another in Him. And if any be otherwise minded, and lust to be contentious, I see no such custom nor examples in the churches of Christ. Therefore let your words be few and savoury, seasoned with grace, that they may administer life to the hearers, for life begets

life, and death begets death. Given forth by one whose name is

"ELLIS LEWIS."

"NEWINGTON, 2nd of 11th mo., 1690."<sup>1</sup>

The boy's short life of a dozen years had witnessed the making of great history. Three Kings had ruled at London, Charles II, James II, and William and Mary, which latter he might have seen on this visit to Newington. Two short years before, the very year that John Bunyan died, the revolution had driven James from his throne; and while, under Charles, the child's short career had seen the rise of the Whigs and permanent political parties with cabinet government, it likewise witnessed, under William, the establishment of the "Bill of Rights," which, with Magna Charta and the Petition of Right of 1629, forms the chief part of the British Constitution that is written. Since his birth, too, he had beheld the ever increasing harshness of the laws against all those groups of Christians who dissented from the established church, until the Toleration Act of William's time.<sup>2</sup> And the very year this letter was written, the boy must have heard how the prosperous Quaker experiment in government on the banks of the Delaware across the sea, whither many of their friends had gone, had received a severe blow in the arrest and species of imprisonment of its beloved leader, William Penn, who at that very time was in seclusion in London under surveillance of the King and Queen. For, since the boy's birth King Charles had not only created Penn's colony, but he and James after him had more than once granted it royal favor, so that in the year this letter was written, when King William was having great difficulty in sup-

<sup>1</sup> These two papers were found among the papers of Mrs. Phoebe Pemberton, who died in 1812, and was a granddaughter of this boy. They were published in the *Bizarre* of May 13th, 1854, with the explanation that it would be interesting "to the many descendants of the gentleman in this city." It was found by William D. Lewis, in 1862, and sent to Judge Lewis as "relating to an old namesake of yours." In "A Collection of the Sufferings of the People called Quakers," by Joseph Besse, London, 1753, Vol. I, p. 743, an account is given of the arrest, abuse or imprisonment of Owen Lewis and twenty-two others in Merionethshire for holding meetings for worship in August, 1660. Mr. Connor, in his genealogical outline, raises a question as to this young exhorter being a cousin of the proper Ellis Lewis, but the author inclines to give the family tradition the preference.

<sup>2</sup> It must be recalled that these harsh acts, beginning with those laws of the 60's called the Clarendon Code, were political rather than religious, intended to prevent the dissenters uniting politically to overturn the monarchy and form a commonwealth again. It was chiefly precaution, rather than retaliation.

pressing the uprisings in Ireland caused by James' efforts to displace him, and Penn was among the many who received written appeals from the deposed King for support, the King and Queen arrested the Quaker leader and caused him to seclude himself and keep away from the young colony bearing his name, for a period of three years. Furthermore, this absence enabled the King to take over the colony as a royal province under his Captain-General at New York as a means of anticipating the moves of Louis XIV in his plans to further the aims of both the deposed James and himself, by an attack on the colonies at that point.

About eight years passed, and Ellis Lewis, then about eighteen, with his mother and Owen Robert, her second husband, and other members of the family, were persuaded by their friends in the now restored colony of Pennsylvania to make preparations for a voyage thither, and even went so far as to forward their household goods, when an illness in the family caused them to abandon their departure temporarily.<sup>1</sup> The delay proved to be more serious than was intended, for, apparently, they were caught up in the movement under William and Mary's government to displace the Irish Catholics with Protestant settlers from Britain, and were carried past Dublin southwestward through Kildare into northern Queens County in the neighborhood of Mount Mellick.<sup>2</sup> Whether the ten years of delay was all spent here cannot be known, but the continual strife stirred up between Catholics and Protestants by the interests for and against the Pretender after Queen Anne's accession were so intensified by the events following the union with Scotland in 1707 and consequent aggressive legislation in Ireland that peaceful Friends must have had little inducement to further delay removal to the colony which Rowland Ellis found so attractive. Certain it is, that Ellis Lewis' and his mother's family did undertake

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<sup>1</sup> There can be little doubt that it was the appearance in London of a little book, written by one who had lived almost continuously in the Delaware settlements since the founding of Penn's colony, namely, Gabriel Thomas, which, in considerable degree, caused this movement to America. It was entitled "An Historical and Geographical Account of the Province and Country of PENNSYLVANIA; and of West-New-Jersey in AMERICA," and was issued at the "*Oxon Arms in Warwick-Lane*" in this year 1698, and dedicated to "Friend William Penn."

<sup>2</sup> Mount Mellick's fame was long due to cotton manufacture by a colony of Quakers. Dolgelley had a similar fame.

the long voyage in 1708, and the Mount Mellick meeting gave Ellis a certificate on "the 25th of the 5th month" of that year, in which it is stated that he had in the new colony at that time, both "substance" and "relations." He was at this time about twenty-eight years old and unmarried.

The impressions of the country that he may have gained from Gabriel Thomas' little book and its map of ten years before must have remained with him, although added to no doubt in some respects, for the little book was capable of being almost as influential as Penn's own prospectuses of nearly thirty years before. Thomas had explained that "the late tedious, hazardous and expensive war (in which *England*, in conjunction with the allies was so deeply engaged) was without doubt no small Bar or Obstacle to the Flourishing of this new country. The great discouragement the traders thither lay under (together with the frequent capture of their ships out and home, could not chuse but baulk them in their honest Endeavours, which (now peace is restored)<sup>1</sup> they may pursue with greater security and satisfaction." But, notwithstanding "obstacles," Thomas had said a wonderful colony had been built up. As Lewis' ship approached the capes he may have recalled Thomas' saying that "What is inhabited of this country is divided into six *Counties*," meaning those from Cape "Henlope" up to the falls of the Delaware, "though there is not the Twentieth Part of it yet peopled by *Christians*"; and yet "the number of *Christians*"—meaning white people—"both old and young inhabiting in that country are, by a modest computation, adjudged to amount to above twenty thousand." "It hath in it," said Thomas, "several navigable rivers for shipping to come in, besides the capital [or chief] *Delaware*, wherein a ship of Two Hundred Tuns may Sail Two Hundred Miles up. There are also several other small Rivers, in number hardly Credible; \* \* \* and it is suppos'd that there are many other further up the country, which are not yet discover'd." And Ellis Lewis might have used the book as a guide, as his ship passed up the bay and river, for it noted the names of

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<sup>1</sup> He was writing in 1697 or '8, for this is from the Preface.



those they were passing: "*Hoorkill-River*, alias *Lewis River*, which runs up to *Lewis Town*, the chiefest in *Sussex County*; *Cedar-River*—*Muskmellon-River*, all taking their names from the great plenty of these things growing hereabouts; *Mother-Kill*, alias *Dover-River*; *St. Jones's*, alias *Cranbrook-River*, where one *John Curtice* lives, who hath three hundred head of neat Beasts, besides great numbers of Hogs, Horses and Sheep; *Great Duck-River*, *Little Duck-River*, *Black-Bird-River*, these also took their Original Names from the great number of those Fowls which are found there in vast quantities. *Apsequinemy-River*, where their goods come to be carted over to *Mary-Land*; *St. George's-River*, *Christen-River*, *Brandy-Wine-River*, *Upland*, alias *Chester-River*, which runs by *Chester-Town*, being the Shire or County-Town; *Schoolkill-River*, *Frankford-River*, near which *Arthur Cook* hath a most stately Brick-House; and *Neshaminy-River*, where Judge *Groveden* hath a very noble and Fine House, very pleasantly situated, and likewise a famous Orchard adjoining to it, wherein are contained above a Thousand Apple-Trees of various sorts; likewise there is the famous *Derby-River*, which comes down from the *Cumbry*"—the Welsh settlements toward Radnor—"by *Derby-Town*, wherein are several Mills, viz., *Fulling-Mills*, *Corn-Mills*, &c." He had thus passed the counties of Sussex, Kent and New Castle—not yet a wholly separate colony (Delaware)—and then passed Chester and Philadelphia Counties almost up to the last one—Bucks, when he might have as he approached Philadelphia, recalled Thomas' description of it, and indeed all the way up have passed evidences of the city's "great and extended Traffique and Commerce," "to *New-York*, *New-England*, *Virginia*, *Mary-Land*, *Carolina*, *Jamaica*, *Barbadoes*, *Nevis*, *Montferat*, *Antego*, *St. Christopher's*, *Barundoes*, *New-Found-Land*, *Maderas*, *Saltetudeous* and *Old-England*; besides several other places"—the vessels generally containing "*Horses*, *Pipe-Staves*, *Pork* and *Beef* Salted and Barreled up, *Bread* and *Flower*, all sorts of *Grain*, *Pease*, *Beans*, *Skins*, *Furs*, *Tobacco* or *Pot-Ashes*, *Wax*, &c., which are Barter'd for *Rum*, *Sugar*, *Molasses*, *Silver*, *Negroes*, *Salt*, *Wine*, *Linen*, *Houshold-Goods*, &c. He may have tried to make out as they came up before the city the "Curious



PENNSYLVANIA IN 1698

From the map in the first edition of Gabriel Thomas' account of that colony,  
at the Historical Society of Pennsylvania, Philadelphia





Wharfs, as also several large and fine Timber-Yards," especially, as Thomas said "before *Robert Turner's* Great and Famous House, where are built ships of considerable Burthen;<sup>1</sup> they cart their goods from that wharf into the city of Philadelphia, under an Arch, over which part of the Street is built, which is called *Chesnut-Street-Wharf*, besides other *Wharfs*, as *High-Street* [Market] *Wharf*, *Mulberry-Street-Wharf*, and *Vine-Street-Wharf*," and a few others. And what did Thomas' books say of this fringe of houses along the banks of the Delaware? "It contains above two thousand Houses, all Inhabited; and most of them Stately, and of Brick, generally three Stories high, after the Mode in *London*, and as many several Families in each. There are very many *Lanes* and *Alleys*, as *First*, *Huttons-Lane*, *Morris-Lane*, *Jones's-Lane*, wherein are very good Buildings; *Shorters-Alley*, *Towers-Lane*, *Wallers-Alley*, *Turners-Lane*, *Sikes-Alley*, and *Flowers-Alley*. All these *Alleys* and *Lanes* extend from the *Front Street* to the *Second Street*. There is another *Alley* in the *Second Street*, called *Carters-Alley*. There are also besides these *Alleys* and *Lanes*, several fine *Squares* and *Courts* within this magnificent city (for so I may justly call it). As for the particular Names of the several *Streets* contained therein the Principal are as follows, viz., *Walnut-Street*, *Vine-Street*, *Mulberry-Street*, *Chesnut-Street*, *Sassafras-Street*, taking their names from the abundance of those Trees that formerly grew there; *High-Street*, *Broad-Street*, *Delaware-Street*, *Front-Street*, with several of less Note, too tedious to insert here." The parts of all these cross-streets referred to were, of course, within two or three squares of the Delaware banks, while Broad Street was a region of country houses, not only then, but for nearly a century afterwards. Thomas admits that the place, Philadelphia, is "so obscure that neither the *Map-Makers*, nor *Geographers*, have taken the least notice of her, tho she far exceeds her Namesake of *Lydia* [in Asia Minor]," for he asserts that she has "Two Thousand Noble Houses for her Five Hundred Ordinary"; but he expressed the belief that she would shortly "be a most Celebrated *Emporium*."

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<sup>1</sup> Turner, Growden and Cook were leaders in the colony and served in both Assembly and Provincial Supreme Court.

The past ten years had done much to hasten that consummation, and Ellis Lewis, on landing, as he may have done some time in August, 1708, saw evidences of many improvements. For one thing, plans were on foot for the first Court house at the top of the hill in the center of High (now Market) Street, at Second, not far from the woods; for at the April meeting of Governor Evans' Council it had been denounced as a shame that "Here, in the Capital town of Govrmt., the Magistrates are obliged to hold Courts in an ale house"! And even the Assembly, which was in session this very month, with their great leader, David Lloyd, as Speaker, leading them in a contest, which, before the leaves fell in autumn, would secure the replacement of Evans with a new Governor, was compelled to meet in a private house, as it had since the beginning, most of the time in Front Street.<sup>2</sup> This was no serious matter though, for the legislative body had only twenty-six members from the three counties, so that its quorum was often scarcely a score. Even the Provincial (or Supreme) Court, which held its sessions in all three counties, had no better accommodations in Philadelphia; but neither was this any great matter, for their meetings were few, short and far-between, as the Assembly had been fighting for nearly a quarter of a century to establish its judiciary system by law, and Judges often refused to serve at all.<sup>3</sup>

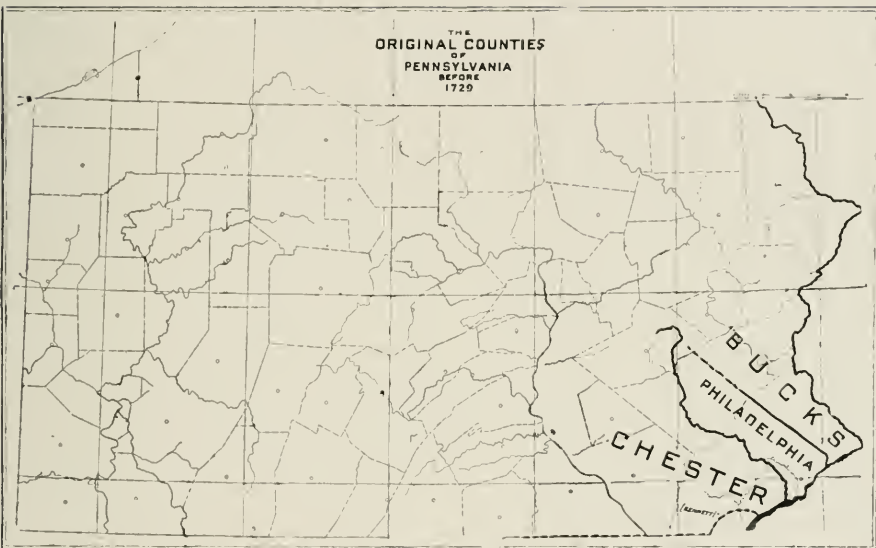
Lewis, however, did not purpose living in Philadelphia. Thomas had said that "in this Province are Four Great Market-Towns, viz., *Chester*, the *German Town*, *New Castle*, and *Lewis-Town*"—the last two, of course, being in what is now Delaware. "Between these Towns," said Thomas, "the Water-Men constantly Ply their *Wherries*; Likewise all those towns have *Fairs* kept in them, besides there are several Country Villages, viz., *Dublin*, Harford [Haverford], Merioneth [Merion], and *Radnor* in *Cambry*; all which *Towns*, *Villages* and *Rivers* took their names from the several *Countries* whence the present Inhabitants

<sup>1</sup> Colonial Records, Vol. II, p. 409.

<sup>2</sup> Mease (1811), in his "The Picture of Philadelphia," page 318, intimates that the sessions were held in private houses in Front Street even after the court house was finished.

<sup>3</sup> One of the most serious troubles of this date was the power of any plaintiff or defendant to get a "corner" on the lawyer supply. A complaint was made before the Governor's Council in April of this year that Judge Growden himself had done so, but he denied it—said he never employed but one.

THE  
ORIGINAL COUNTIES  
OF  
PENNSYLVANIA  
BEFORE  
1729



Prepared from original sources by the author. (See footnote, page 18)



came." And it was the village of Haverford where his Uncle Rowland Ellis lived that was apparently the first objective of Ellis Lewis.<sup>1</sup>

Just where he lived for the next five years does not appear, although it was near Concord after the first year; but it is known where he finally settled, and that about his old home still hangs a famous tale. Even while in Mount Mellick he must have heard, or even read, if he had chosen to look up the records of their "Meeting," how one of the leading men, Nicholas "Newlands," as they wrote it, or "Newlin," as he himself preferred, had, in February, 1683, been reluctantly granted a certificate of removal to Pennsylvania because he coveted more "worldly liberty" than Ireland afforded; and that he and his twenty-three-year-old son Nathaniel had gone there with the family. Lewis must have heard how, after Penn left, he was a member of the Provincial Council, headed by Thomas Lloyd, for almost three years (1685-87); how he was a Justice of the Chester Courts and a man of great wealth; how, after his death, his son, Nathaniel, had become equally influential—a member of Assembly several times, and even this very year of special interest, 1713, he was one of the able supporters therein of his fellow-member from Chester and powerful leader, David Lloyd.<sup>2</sup> Lewis must have recalled how Newlin had been a member of the stormy Assembly of 1700, with Rowland Ellis and others, when a new "Frame" or constitution of government was desired by the Assembly, and how Newlin was made a member of the committee to draft it.<sup>3</sup> And Lewis became a frequent visitor at the brick residence of the Hon. Nathaniel Newlin at Concord,

<sup>1</sup> Young Lewis had lost his father before 1700 and his mother, Mary, had married Owen Roberts. The family seems to have all come together and, like Rowland Ellis, settled in Gwynedd. H. M. Jenkins, in his "Historical Collections of Gwynedd," gives a letter of 1716 addressed to Owen and Mary Roberts by Benjamin and Ann Mendenhall of Concord, in which Ellis Lewis is referred to. Ellis Lewis' mother was alive in 1732-3, as she is mentioned by him in his first will of that date, an instrument which was in 1894 in possession of Thomas H. Darlington of West Chester, according to Futhey and Cope's history of Chester County.

<sup>2</sup> The votes of Assembly of 1713 show Newlin to have been the usual choice, with one other, to notify the Governor of various desires of the Assembly; while David Lloyd was usually chairman of important committees for drafting laws or addresses. Ellis Lewis is said by Futhey and Cope, p. 669, to have moved within the bounds of Concord Meeting in 1709, the year after his arrival, where the Mendenhalls and Newlins both owned much land. See Smith's Atlas of Delaware County, map 5.

<sup>3</sup> Votes of Assembly, Vol. I, p. 123. Newlin was afterwards one of the Proprietary's Commissioners of Property and a trustee of the Provincial Loan-Office. He later became owner of a 7,000-acre tract of land which, as a township, still bears his name. Futhey and Cope's History, p. 669.

because, being a bachelor of thirty-three years, he had concluded that Miss Elizabeth Newlin, some seven years younger, should become his wife.<sup>1</sup> After their marriage at Concord Meeting in 1713, they lived but three years near Concord, and finally settled at Kennett, where, among other children, the last child, a third son, was born May 22, 1719, and given his own name, Ellis Lewis, junior.<sup>2</sup> This child hardly emerged from babyhood before he lost his mother, and on the 11th of March, 1723, his father was married again, this time to the Widow Mary Baldwin, at Falls Meeting in Bucks County.<sup>3</sup>

Mr. Lewis had no children by his second marriage, but he must have been prosperous. He owned a mill, and when they had been married four years a home was built opposite on the hill, which has become famous the world over wherever "The Story of Kennett" has been read.<sup>4</sup> Indeed, Ellis, junior, might have had many of the experiences of Taylor's hero, Gilbert Potter. "The house," reads the novelist's very accurate description, "built like most other old farm houses in that part of the county, of hornblende stone, stood near the bottom of a rounded knoll, overhanging the deep, winding valley. It was two stories in height, the gable looking towards the road, and showing, just under the broad double chimney, a limestone slab, upon which were rudely carved the initials of the builder and his wife, and the date '1727.' A low portico, overgrown with woodbine and trumpet-flower, ran along the front. In the narrow flower-bed, under it, the crocuses and daffodils were beginning to thrust up their green points. A walk of flag-stones separated them from the vegetable garden, which was bounded at the bottom by a mill-race, carrying half the water of the creek to the saw and grist mill on the other side of the road. Although this road was the principal thoroughfare between Kennett Square and Wilmington, the house was so screened from the observa-

<sup>1</sup> Miss Newlin was born March 3, 1687, or, in old form, 1st mo. 3rd, 1687-8. Futhy and Cope, p. 669.

<sup>2</sup> Conner's "Pedigree."

<sup>3</sup> There were four children: Robert, born March 21, 1714; Mary, on March 6, 1716, and married to Joshua Pusey; Nathaniel, born December 11, 1717; and Ellis, junior. Futhy and Cope, p. 635.

<sup>4</sup> The Story of Kennett, by Bayard Taylor. The Putnam edition of 1902 has a view of this house on the cover. The description is on pages 23-4.



L  
E M  
1721



THE LEWIS HOUSE, KENNETT SQUARE





tion of travellers, both by the barn and by some huge, spreading apple-trees which occupied the space between the garden and the road, that its inmates seemed to live in absolute seclusion. Looking from the front door across a narrow green meadow, a wooded hill completely shut out all glimpse of the adjoining farms; while an angle of the valley, to the eastward, hid from sight the warm, fertile fields higher up the stream."

And here Ellis Lewis, junior, spent a large part of his youth; not all, indeed, for he was of an adventurous spirit, and required even more "worldly liberty" than his great-grandfather, Newlin. When ten years old he might have heard how the Assembly at Philadelphia, presided over by the venerable Chief Justice, David Lloyd—his last service as Speaker—had objected to the great influx of "Irish Papists and convicts" into the population and, as they believed, the consequent disorders; and of how the increased population necessitated an increase of paper-money—50,000 pounds, the Assembly thought, and 30,000, Governor Gordon believed; how the new settlers in "upper Chester County"—the "upper Parts of the Province of Pennsylvania, lying towards *Sasquehanna, Conestogoc, Donnegal, &c.*," asked for a fourth county, and how the Governor, while claiming that he had the right to create counties and cities, yet yielded to the Assembly because it would involve new members in that body; how it was passed on May 10 (1729), and the new county beyond the Octoraro and Schuylkill to wherever the Province might end was to be called Lancaster. He may not have known, however, that no Indian lands had been secured west of the Susquehanna, and probably none but traders thought of settling so far into the wilderness.<sup>1</sup> But, seven years later, late in 1736,

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<sup>1</sup> Votes of Assembly, Vol. III, pp. 69-71; and Hall and Sellers Laws of Pennsylvania, 1700-75, p. 152. For maps, etc., illustrating Indian purchases see "The Life and Times of Thomas Smith, 1745-1809, a Pennsylvania Member of the Continental Congress," by Burton Alva Konkle, p. 28, et al. The accompanying map of the original Lancaster County is the first made, so far as the author is aware. The vagueness of outline is due to the fact the settlements were within the last Indian purchase of 1718, and the law did not allow settlement beyond. The county legally extended, however, to the limits of Penn's colony grant. The terms of the boundary part of the act are interesting: "Be it enacted by the Honourable Patrick Gordon, Esq., Governor of the Province of Pennsylvania, &c., by and with the advice and consent of the Freemen of said Province, in Assembly met, and by the Authority of the same, That all and singular the Lands within the Province of Pennsylvania, lying to the Northward of Octoraro Creek, and to the Westward of a line of marked Trees, running from the North Branch of said Octoraro Creek, Northeastly to the River Schuylkill, be erected into a County, and the Same is hereby

when he was a young man of seventeen or eighteen, and he had no doubt heard how many venturesome settlers had crossed the Susquehanna into Indian lands and caused so much trouble both with the Indians and Marylanders that a council just held in Philadelphia had bought more titles to land all the way back to the "Kekachtanium Hills" and now the lands were open.<sup>1</sup> The exodus for the new lands particularly enlisted the new German, Irish and Scotch settlers, and the young men of the old counties, notably Chester, and young Ellis Lewis joined a company composed of Thomas Hall, John McFesson, Joseph Bennett and John Rankin. They were on horse-back, and when they came to the Susquehanna found no mode of crossing but canoes; but Bennett, Rankin and Lewis, who seemed equal to all emergencies, fastened two canoes abreast, placed the horses' fore-feet in one and the hinder feet in the other, and succeeded in transporting their animals to the promised land! They finally reached the virgin valley just over the hills below John Harris' trading post and ferry, now Harrisburg, and staked their claims on the red soil and underlying red rock of what they, in consequence, named the Red Land Valley. As Bennett seemed to be the leader of this trio of adventurous spirits, the creek in the midst of it was given his name.<sup>2</sup>

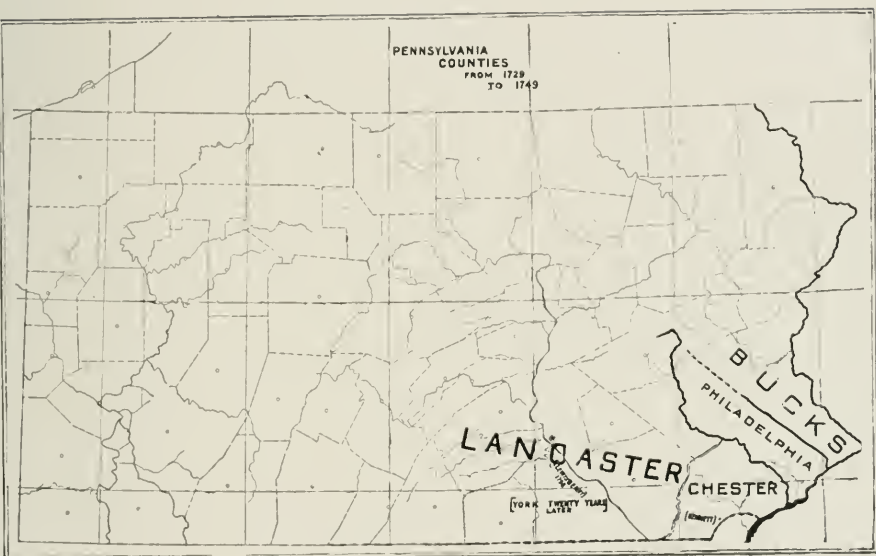
As the seasons passed, the Red Land Valley got rather more than its share of westward settlers, as it was a great favorite with Chester County Friends, who added to its population nearly every year. And about eight years later, when Ellis Lewis had become a man of twenty-five, he went back to the old Birmingham Meeting, northwestward of Concord, where, on April

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erected into a County, named, and from henceforth to be called Lancaster County"; and these lines with the Schuylkill were to be the boundaries between it and Chester and Philadelphia Counties. The Italics are the author's.

<sup>1</sup> Colonial Records, Vol. IV, p. 88. These are the Kittatinny or Blue Mountains.

<sup>2</sup> History of York County, by W. C. Carter and A. J. Glossbrenner, 1834, p. 28. Ellis Lewis, Senior, lived at the old place at Kennett until 1749, when he "went to the city"—Wilmington—and died there the next year, on August 31 (1750). (Futhey and Cope, p. 635.) His will was proved at New Castle on October 29th following (Book G., Vol. I, p. 430), and is now at Wilmington in the Register of Wills' office. His property was equally divided between his four children, after certain provisions for his wife, his brother's children, and two cousins, daughters of Rowland Ellis. Lewis bore out in life-long character the indications of his youth, as "a man of good understanding" and long an elder of Friends. He was buried at Kennett. The old place was advertised for sale in the *Gazette* by Ellis, the son of his eldest son, Robert, shortly before the Revolution.



Prepared from original sources by the author



25th (1744), he secured a wife, in the person of Ruth, the daughter of John Wilson, and made him a home of his own in the beautiful Red Land Valley of imperial Lancaster County.<sup>1</sup> The following year he took a certificate to the Sadsbury Meeting in that county, it is said, and the records of some of the meetings of which he became a member show that he required a "worldly liberty" in "high living," to which the Friends objected, especially in the use of "liquor"—not an uncommon incident of frontier life of that day.<sup>2</sup> He was an important man of his community, and in later years became a trustee of the school in Newberry Township, and a man held in high esteem, but it was years before he gave up "high living."<sup>3</sup>

He had been married but five years, when the growth in the vast county of Lancaster beyond the Susquehanna was so great that in the summer of 1749 he joined the other settlers in the region between the South Mountain and that river who appealed to Governor Hamilton and the Assembly, then at the new State House in the western part of Philadelphia, where Chief Justice John Kinsey, like David Lloyd, before him, sat as Speaker, and Benjamin Franklin was Clerk—urging the creation of a fifth county, to be called York. This course stirred the people in the Cumberland Valley beyond them to demand a sixth county. The one was granted in August, and its boundaries limited as above indicated, but the other, Cumberland, was created the following January and contained the remainder of the former imperial domain of Lancaster to the bounds of the province—"bounded northward and westward with the line of the province," says the act itself, "eastward partly with the river Susquehanna, and partly with the said county of

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<sup>1</sup> Concord Meeting Record, Vol. I, p. 159.

<sup>2</sup> The records of the Warrington meeting show that "liquor" was used in the harvest field, but it was a serious matter to get "light-headed." One of his two old friends tried to avoid sunstroke in this way and explanations were required. Warrington Monthly Meeting Records, 1747-1856, p. 2.

<sup>3</sup> This "high living" must be interpreted in the light of severe Quaker spirituality, and not other than the side-board customs of most leading families of that day. It was a species of "worldly liberty." He took his letter back to Kennett in 1753, and Kennett, after disowning him for a time, gave him a certificate in 1770 to Warrington Meeting on his giving up his "worldly" tastes. The records show that he was an exemplary Friend ever afterwards—events which have no small bearing on the rest of this narrative. Abstract of Warrington Monthly Meeting, 1747-1850, p. 321, and also other records.

York, and part by the line dividing the said province from that of Maryland."<sup>1</sup>

Not far from the time when the news spread over the province that the aged Quaker leader, Chief Justice and long-time Speaker of the Assembly, John Kinsey, was stricken with apoplexy one day while visiting in Burlington—an event that heralded the downfall of Quaker control in the government of the province—Mr. and Mrs. Lewis had born to them a son, whose advent occurred the last day of January, 1756, and whose name was Eli.<sup>2</sup> When he was about four years old his mother got a certificate to Warrington Meeting for herself and young Eli, and the young man grew up in the little settlement about his home, which was finally to bear his name. Like his father before him, when he was about eighteen years old, and the first rumblings of the impending trouble with the mother-country arose, young Eli went to Philadelphia, the place, no doubt, where he learned the printer's trade, which Mr. Franklin had been making so popular and powerful.<sup>3</sup> He appears to have been there about a year and a half (at least that is the period between his certificate of removal and re-

<sup>1</sup> Dallas' "Laws," Vol. I, p. 330. As the original bounds of Philadelphia and Bucks Counties bear upon these boundaries, it may be stated that the original three counties were only vaguely indicated by Penn in a private conversation with Surveyor Holmes, who put them upon his map with equal vagueness of county, though not of township lines. Gilbert Cope says "it is said" that this was done November 25, 1682, but he knows no authority for it. This was the public understanding also, for so late as April, 1685, "several members of Council" witnessed that the Governor had said that "Poaquesson Creek" with Southampton and Warminster Townships, "and thence backward" was, and they declared, should henceforth be the Bucks-Philadelphia line, and one of the counsellors was Nicholas Newlin, himself. As to Chester, "Symcock" and Wood witnessed that Penn had told them "Bough Creek," at upper end of Tinicum Island, to Mill Creek, etc., making the irregular line to the Schuylkill, now so well known, and the said Schuylkill "afterwards to be the naturall bounds." (Col. Rec., Vol. I, p. 126.) Even in March, 1689, the matter was up again in Council, who seemed to be ignorant of such a vital matter. They took deposition and Thomas Usher, Chester's sheriff, told why Penn wanted the Philadelphia line to go beyond Schuylkill, namely, because robbers could get away from the city too easily. He also said Penn intended to enlarge the county down to the Brandywine. Council stood by the record of 1685, after they found it! Therefore the projection of the Bucks County southerly line to the limits of the province completed the original bounds of Bucks County; and the Schuylkill source would be the end of the line of separation between Chester and Philadelphia, beyond which they would merge until it became necessary to define them. (*ib.*, p. 263-4.)

<sup>2</sup> They had but one other child—Ellis, who died some time previous to his father's death, the latter event occurring between December 28, 1794, and February 16, 1795, at the age of nearly seventy-six years. Abstract of York Wills, p. 299.

<sup>3</sup> He was given a certificate to the Southern District of Philadelphia the 8th of January, 1774, and returned one June 10, the following year. Abstract of Warrington Records, p. 321. A quaint old home-wrought pocket-book was made for him in 1774, with the year and his initials worked in them, presented no doubt for this journey. It is now in possession of Miss Josephine Lewis, Philadelphia, and contains the parchment certificate of marriage of the first Ellis Lewis to Mary Baldwin.



turn), but when it became evident in May (1775) that the Assembly was to join the Continental Congress, and were beginning to break with Governor John Penn, he got his letter before the June meeting of the Assembly and was back in the Lewis settlement of Red Lands Valley by the 10th of the latter month.

Now, his father, Ellis, had five years before abandoned all desire for "worldly liberty," and, as far as can be known, was, like most Quakers in York County as well as elsewhere, opposed to war and the taking of oaths as much as the free use of "liquor." So young Eli had a painful choice to make when the Associators began organizing that autumn, and it became evident that in that respect he would require "worldly liberty." Events moved rapidly. Two companies had already been formed in York County before he came home, and immediately after his return the summer was noisy with Associators and militia organizations. Unfortunately there seems to be no record of his course in 1775-6, but he must have had even modest part in military preparations, for in 1777, when operations against Philadelphia aroused the State, he was, on October 1st, commissioned Major of the First Battalion of York County Associators, and it is said that he took part in the battles of Brandywine and Germantown, becoming a prisoner either then or soon after in the old Sugar House in Philadelphia.<sup>1</sup> He must have been soon released on parole, for several months before the evacuation of Philadelphia he was at Wilmington, Delaware, and in Maryland, in which latter State he writes a very circumspect letter on January 29, 1778, to his father, beginning with "I have more leisure and opportunity to write more largely than heretofore." He wrote again from Wilmington, when he said, "I continue making cards."<sup>2</sup> We have no news in town, but what the Papers relate, In which the accounts of the Indians are

<sup>1</sup> Pennsylvania Archives, Vol. XXIII, p. 464, in a "Miscellaneous List of Revolutionary officers," for the commission only. He is said to have had command of protection of line of supply train.

<sup>2</sup> As a printer, he was in all probability making visiting cards, which, according to custom, were playing cards with the person's name printed on the plain white back. Cards of this kind can be seen at the Pennsylvania Historical Society. John Paul Jones had such cards, the backs having a border and his name printed thereon. The author has a photograph of the latter card kindly furnished by Mr. Bringham, of Wilmington. Wool-carding machines were also made at that city, but the probabilities point to printing as his occupation.

very Terrifying, But perhaps your accounts from them are more favourable. Since I wrote last I saw an inhabitant of York Town who gives me a more favourable account from there than I expected to hear. There has been strange overturnings in the face of things beyond what many who were accounted people of reflection imagined"—no doubt referring to the evacuation of Philadelphia by the British in June, as he was writing "August the 9th, 1778." "A considerable succession of Events," he continues, "seems to convince many that Providence is about to Establish an Empire in our Western World, Nor think It strange when the History of every Age From the Confusion of Tongues to the present time furnish us with Instances of the like kind. God has ever appear'd to have This grand design in view, to wit: the Debasing the arrogance and taking away the self dependance of his Creatures and substituting Humility and a Reliance on his divine [not plain] in their Place. England and America United were growing the terror of the world and a spirit of Arrogance and self-sufficiency was dayly increasing in their Councils. Then Why should it be strange that God in his wisdom should separate them, and play their Pride and arrogance against each other till that they shall know that the Most High ruleth in the Kingdom of men and sitteth up and pulleth down according to his pleasure. And surely there is no government better calculated for the good of mankind than that of Providence whether immediate or instrumental. Then Let us since he ruleth in the Kingdom of men setting up and pulling down at his pleasure submit with a cheerful willingness to that government that he is pleased to set over us, for however the condition we are in may appear to thwart our Natural Inclination let us rest assured that if it is the choice of providence it is best for us—I shall just conclude these remarks with a few lines from Pope which I always much admired, viz.:

"All Nature is but art unknown to thee  
All Chance Direction which thou can'st not see  
All Discord Harmony not understood  
All partial Evil Universal good  
In spite of pride in Erring Reason's sight  
One Truth is Clear—Whatever is is Right."



He adds that he expects to be home by autumn, a plan which was no doubt accomplished, for he was in "Newbury" the following year.<sup>1</sup>

On the 14th of July of the latter year, he writes to a friend in Chester County, saying: "Having an opportunity I think safe by way of Goshen, I shall embrace it with satisfaction. Thine by T. Kirk I had the Pleasure of receiving Being glad to hear of thy Welfare and that I am still held in Remembrance by a friend I much esteem What Reason thou hast to believe Me thoughtful about engaging in that Weighty affair of Marriage, I am unacquainted, but as I don't approve of being over delicate I am free to own It is a subject that has engaged many of my thoughtful hours"—and more follows on the philosophy of this institution in a vein as old as the divine passion itself. He is much exercised though because "the Times are so precarious," and cites two cases of broken engagements of interest to his friend! His plans culminated two months later, for on the 11th of September he requested a certificate to Newgarden Meeting to marry Pamela Webster, which request was granted on October 9th, and they were married on the 10th of the following month.<sup>2</sup>

Major Lewis was a comparatively wealthy man for such a community and his merchandise store was the nucleus of a rising village. His example was therefore a matter of serious concern to devout Quakers, and when the war was fully over, the various meetings brought the numerous warrior Friends to account. "Newberry" Meeting brought before the Warrington Monthly Meeting the military record of Major Lewis and his taking of the test oath demanded under the State Constitution of 1776. They complained that he neglected meetings, "attending an Election for the Choice of Military officers, setting up for a Colonel among them, also attending a muster." The Warrington Meeting, after considering it until April 10, 1784, disowned him. He indicated later to them that he intended to appeal to the Quarterly Meeting, and was in no mood to view his course as wrong

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<sup>1</sup> Letters in the possession of A. E. Lewis, Jr., Washington, D. C.

<sup>2</sup> Her father was John Webster and her mother Jane Brinton Webster, who was a descendant of the first William Brinton, who was a member of the Assembly as early as 1703. Warrington Records, 1747-1856, p. 322, for marriage certificate grant.

at this period, at least. The appeal did no good, however, and he entered with even greater enthusiasm into patriotic and political movements, as a disowned Friend, or as the world at large would denominate him—"a fighting Quaker."<sup>1</sup>

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<sup>1</sup> Warrington Records, as before, p. 323, and the Quarterly Records, p. 181, in abstract at the Pennsylvania Historical Society.

## CHAPTER II

HIS FATHER, MAJOR ELI LEWIS, FOUNDS THE FIRST  
NEWSPAPER AT HARRISBURG, AND THE BOY, OR-  
PHANED AT NINE YEARS, BECOMES PRINTER'S  
APPRENTICE ON THE SAME PAPER

1788

The presence of the capital of the United States in York County during the revolution and the State capital in Lancaster at the same period had no small influence on political thought in central Pennsylvania then and long afterwards. Franklin's *Gazette* had been printed at York at the same time and it is not surprising that, under the circumstances, when, in 1787, M. Bartgis and T. Roberts started a paper in York called *The Pennsylvania Chronicle and York Weekly Advertiser*, Major Lewis, whose very letters show some literary ability and who had some experience in the printer's art, should have become interested. He was a devoted Federalist, and during the following summer he rallied his friends in Newberry Township—"The Tribe of Eli"—as they were called in the *Chronicle*, in support of the new National Constitution.<sup>1</sup> With the final adoption of this great instrument came the jubilation all over the land with procession and song. Major Lewis wrote a "*Federal Song*," which was set to music by the local music teacher, Edward Tyler, and after the parade and toasts, at York borough, it was sung by a chorus accompanied by hantboys.

"No more shall anarchy bear sway,  
Nor petty states pursue their way,  
But all united firm as one,  
Shall seek the gen'ral good alone.  
"Great Washington shall rule the land,  
While Franklin's council aids his hand."

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<sup>1</sup> This term "Tribe of Eli" was used of him in an election of 1789 for sheriff. His own name was on a ticket for the Assembly, but he failed to be elected.

"The gilded toys of Europe's shore  
 Shall rob us of our wealth no more,  
 Imposts their dang'rous progress stop  
 And premiums bear Industry up.  
 "Great Washington," etc.

"The wasted soil its strength renews,  
 Collecting from the rains and dews;  
 With proper tillage stronger grows,  
 Such skill true agriculture knows.  
 "Great Washington," etc.

"The Arts of Peace shall flourish here,  
 Nor slavish nations interfere;  
 At home as *thirteen* states we're known,  
 While foreign courts shall *feel* us *one*.  
 "Great Washington," etc.

"Thus Halcyon days shall bless our life,  
 And party rage forget its strife,  
 Like children of one parent still,  
 Under one vine and fig-tree dwell.  
 "Great Washington shall rule the land,  
 While Franklin's council aids his hand,"<sup>1</sup>

Meanwhile the *Chronicle and Advertiser* at York was about to have a rival, which was started scarcely six months after the above song appeared, namely in January, 1789.<sup>2</sup> This may have been encouraged by the fact that the owners of the *Chronicle* plant proposed to move to a new and growing center of great interest, not far away on the Susquehanna beyond the Red Lands Valley. Old John Harris at Harris' Ferry and his son, John, junior, were able and ambitious men. His stone residence on Front Street had been overlooking the Ferry and the mountains beyond ever since 1766, and a settlement had grown up in the beautiful situation, whose attractiveness had been witnessed to in the journals of Mannasseh Cutler and John Penn within two years past. He had secured creation of a new county of Dauphin (in honor of public feeling for the King and Dauphin of France) on March 4, 1785, and laid out a town called Harrisburg and secured it for the county seat, altho' it is said Chief Justice McKean, through some pique toward Harris, attempted to name it Louisbourg, in honor of Louis XVI.<sup>3</sup> Furthermore, his ambi-

<sup>1</sup> This appeared in the *Pennsylvania Packet* of Philadelphia of Tuesday, August 5, 1788, with a full account of the proceedings.

<sup>2</sup> Gibson's York County, p. 378.

<sup>3</sup> Dr. Egle's History of Dauphin County, p. 297.

tion extended not only to making of his town a county seat, but even a State, and, what is more, the National Capital as well! On August 25th of this very year, 1789, Senator William Maclay, Mr. Harris' son-in-law, presented in the First Congress at New York several Pennsylvania sites for the proposed National Capital, and among them Harrisburg.<sup>1</sup> It was about this time that the York *Chronicle's* plant was moved over to this ambitious town by its owners, T. Roberts & Company, and there is every reason to believe Major Eli Lewis was one of the "Company." At any rate they issued, later in that month, the first number of *The Harrisburg Journal and The Weekly Advertiser*, and on the 9th of September issue No. 3 appeared, containing a poetical effusion entitled "HARRISBURG EXPLAINED, in the following petition," under the pen-name "Cives," which, in all probability, was Major Lewis:

"Whereas it is of consequence,  
Congress should fix its residence—  
That seat of honor and renown,  
Call'd long since the 'federal town';  
The people now of Harrisburgh,  
From a conviction not absurd  
That there's no other situation,  
Can equal this in all the nation;  
Your honors do must humbly pray,  
To make it your abode for aye"—

after which Harrisburg is "explained"—i. e., described in a spirit of jollity and hopefulness.<sup>2</sup>

Within a year the paper was bought out entirely by Major Lewis and a Mr. Prague and the name changed to *The Harrisburg Monitor and Weekly Advertiser* about September, 1790.<sup>3</sup> Unfortunately no file of Major Lewis' paper is known to exist, but somewhat over a year later, a few weeks after the defeat of St. Clair by the Indians in the Wabash country on November 4, 1791, he wrote an extended poem on that theme which was published in pamphlet form during 1792. Its title page read: "St.

<sup>1</sup> Annals of Congress, 1st Congress, 1789-1791, Vol. 1, p. 71.

<sup>2</sup> This issue, No. 3, is preserved at the Pennsylvania Historical Society. Mr. George R. Prowell, of the York County Historical Society, has a copy of issue No. 20, the only copies known to the author.

<sup>3</sup> In the *Philadelphia Inquirer* of April 19, 1860, a writer says he has before him the 20th number of *The Harrisburg Monitor and Weekly Advertiser*, under date of February 1, 1791, published by Lewis & Prague, and that the senior editor was Major Eli Lewis. No copy of this has yet been discovered by the author.

Clair's Defeat, a Poem by Eli Lewis," with the following couplet:

"A tale, which strongly claims the pitying tear,  
And ev'ry feeling heart must bleed to hear."

Below is the legend: "Harrisburgh, Printed MDCCC-CII."<sup>1</sup>

It opens as follows:

"Inspir'd by grief, to tender friendship due,  
The trembling hand, unfolds the tale to view—  
A tale which strongly claims the pitying tear,  
And ev'ry feeling heart must bleed to hear  
But chiefly ye, the keenest pains shall know,  
And fiercest sorrows in your breasts shall glow;  
Where fates, severe, their bitter draughts impart,  
And burst the cords of nature from the heart,  
Nor less, Lavanaia, shall thy bosom feel,  
Where suffering love, its scorching wounds conceal;  
While custom's laws, unfeeling and severe,  
To grief-charg'd hearts, deny the soft'ning tear"—

Then follows a symbolic picture of this chapter in the tragedy of the race war in the West, and this expressed for many a home in Pennsylvania the hideous reality that was only too keenly felt:

"Thro' clustering beech, whose boughs obscure the day,  
A fearless band pursue the devious way.  
And 'midst this dark, impenetrable wood  
St. Mary's river rolls her silent flood.  
There boding Horror stalks around her cell,  
And beats responses to the savage yell.  
'Twas her's, the cheerful walks of life to shun  
And hide in vales, sequester'd from the sun,  
Where prowling wolves and fearless panthers roam,  
And savage men, more dreadful, make their home.  
These with unwearied footsteps trace the wood,  
And thirst insatiate, for revenge and blood,  
Strangers to fear—by burning rancour led,  
Their hostile bands had wide destruction spread,  
Where infant arts had just begun to dawn,  
And smiling verdure deck'd the cheerful lawn.  
These Horror once had chosen for her own,  
And with exulting shouts her choice made known.  
The sounds, terrific, beat the trembling air,  
And savage yells, their loud assent declare.  
To check their inroads, and relieve the land,  
The great St. Clair led out this warlike band.  
These Horror saw, as late encamp'd they lay,  
And ghastly smiling, mark'd them for her prey.  
Swift to her savage sons the Daemon strode,

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<sup>1</sup> The only copy of this booklet known to the author is the one in the library of the late Dr. W. H. Egle of Harrisburg. A manuscript copy is in possession of Miss Josephine Lewis of Philadelphia.



And call'd a council in the dark abode,  
 Her standard, scarce unfurl'd, salutes the air,  
 'Till round the Fiend her warlike host repair,  
 From distant woods, from lands to fame unknown,  
 Where hateful malice, seeds of strife had sown;  
 By warlike chiefs, to blood and murder bred,  
 The hostile tribes of various lands were led.  
 These crowd her standard on the extensive plain,  
 And o'er their arms with fix'd attention lean.  
 Whilst thro' the various tribes she cast her eyes,  
 High o'er their heads the fluttering banner flies;  
 Of tyger pelts, from Lybean mountains brought,  
 With curious art, the wondrous flag was wrought,  
 Phosphorean dyes, the living figure mark,  
 Which glow the liveliest in the deadliest dark.  
 Around the edge, a range of circles shows,  
 Each fill'd with some device of human woes—  
 Here to a sapling seems a victim bound;  
 While slow-consuming fires enclose him round,  
 And while their tort'ring flames the sufferer feels,  
 Thro' every pore the wasting spirit steals.  
 There to a stake another victim stands,  
 Stuck thick with arrows from infantile hands,  
 Whose hands, too weak to deal a deadly blow,  
 But feebly urge the arrow from the bow;  
 With force enough to pierce the outer part,  
 But leave uncheck'd life's current round the heart.  
 Next shows a maid in pride of beauty crown'd,  
 Whose tender hands to distant stakes are bound;  
 In either breast a bunch of pine splints glows,  
 Which quick consumes the lily and the rose,  
 That just before upon her face contend,  
 Which most their stains with pleasing grace should blend.  
 And e'er fond life will cease its seat to claim,  
 In each fair socket sinks the scorching flame.  
 Deep piteous cries her crisp burnt lips impart,  
 And late—late—burst life's cords about her heart.  
 Next sits a mother held by savage hands,  
 Whose grief-burnt heart all friendly tears withstands;  
 Before her eyes, upon a lance is borne  
 Her lovely babe, just from her bosom torn;  
 Fierce inward pains all tort'ring powers defy,  
 And prompt her soul their strongest force to try;  
 She raving dares the hottest flames deride,  
 And, with her taunts their tardy progress chide;  
 But hearts like theirs all tenderness defy,  
 Her life they spare, because she seeks to die,  
 And thus around the num'rous circles show  
 The various tortures of the savage foe;  
 With all the height'ned coul'ring Fiends cou'd give,  
 Or, hell-taught artists prompted minds conceive.  
 The field within a curious landscape seems,  
 Whose fertile space with wond'rous prospects teems,  
 The scene, no doubt, which gave the Daemon birth,  
 When the arch Fiend led all his legions forth  
 To, vainly, combat with th' immortal sire,  
 'Till his just rage enwrapt them all in fire,  
 Where by fierce flames in circling whirlwinds hurl'd

Around the confines of th' infernal world,  
 With wild confusion all the host is driven,  
 While fate, eternal, bars their way to heaven.  
 As round her sons she cast her gleaming eyes,  
 Infernal joys within her bosom rise;  
 Forth from her lips the issuing accents broke,  
 Hell heard with joy and list'ned while she spoke.  
 "Adopted sons—my last—my chiefest care,  
 For whose success I toil nor watching spare;  
 From scenes of peace, of order and of love,  
 I flew to you, these gloomy haunts to prove;  
 Where hollow beech their rugged branches spread,  
 And boding owls sit croaking o'er the head;  
 Where fearful ghosts are mix'd with ev'ry breeze,  
 Whose doleful shrieks pierce awful thro' the trees,  
 To you I come. Then hear a mother's charge,  
 With deadly venom let each breast enlarge.  
 Behold our foe—see Order's sons appear,  
 And by yon stream their waving banners rear.  
 Should they succeed, these doleful haunts no more  
 Shall yield us pleasure as in days of yore;  
 But o'er this wide resort of wolf and bear,  
 Will yellow fields and deep green meads appear.  
 Then where—Ah where! Shall we, my sons, retire?  
 In what dark wood shall blaze our lonely fire?  
 Nay, sooner shou'd dark chaos spread her reign  
 And night eternal her lost empire gain.  
 Surround the foe, while these dark shades prevail,  
 And at my signal all their force assail.  
 My voice shall rise—Your yells shall mix with mine,  
 And kindred daemons the loud chorus join."  
 In hollow caves the fearful murmurs groan,  
 And Order's sons its chilling power own.  
 They hear—obey—and instant take their stand,  
 And silent wait on Horror's loud command.  
 Her standard lifted wide expands in air,  
 And thro' the night the living colours glare.  
 This Order's sons beheld, bright, gleaming far,  
 And silent wait the dark, eventful war,  
 Yet firm resolved, in conquest or in death,  
 To keep their honor with their latest breath.  
 In this dread night, where Horror's pow'rs combined  
 To crowd with painful thoughts each feeling mind,  
 Portentous dreams obtrude on Lev-ret's breast,  
 As 'gainst an oak, in arms, he lean'd for rest.  
 Fair, soft and pleasing as the op'ning dawn,  
 Beheld by shepherds o'er the extensive lawn,  
 Lavina's form came issuing from the wood,  
 And full, to view, before her lover stood.  
 As lightning swift, he flees to clasp the fair,  
 But the lov'd phantom wide desolves in air,  
 And such, alas! Shall all thy prospects prove  
 Thy long try'd faith in firm, unshaken love,  
 And thou to savage foes resign thy breath,  
 Securely lodg'd in the dark caves of death;  
 Where no returning day the soul regales,  
 But one long night eternally prevails,  
 Where doors are lock'd by dark Oblivion's seal,



And mem'ry more no past events reveal.  
 And now the gloom of night begins to fade,  
 And bright'ning dawn is o'er her curtain spread;  
 When watchful Horror, as the day appears,  
 Beneath her flag her tow'ring head uprears,  
 Thrice pierc'd her eye with fierce and dreadful glare,  
 And thrice her wide expanded lungs inhale the air.  
 When burning Etna, by some earthquake rent,  
 Admits her fires where close the air is pent.  
 Th' expanding element all force defies,  
 And floods of lava spout against the skies;  
 So from her breast where hateful malice burns,  
 With ten-fold rage, the heated air returns,  
 The savage yells mix with the dreadful sounds,  
 'Till owls' hoarse croaks the dying echo drowns.  
 Stern slaughter then came stalking thro' the woods,  
 With gleaming eyes and hands besmear'd with blood.  
 On every side the sons of Order fall,  
 And Horror soon thro' all their lines prevail.  
 Long, long th' unequal conflict was maintain'd,  
 And the wide wood with human blood bestain'd.  
 Here, gallant Butler, ripe in glory, fell,  
 With more whose names some abler muse will tell.  
 Here, Kelso, too, amidst this tragic strife,  
 Cut early off from opening scenes of life;  
 Whose generous soul each manly virtue crown'd,  
 Lies a cold corpse upon the blood-stain'd ground,  
 And e'er the brave St. Clair the day will yield,  
 Full half his army dies upon the field.  
 But most for thee, to love and friendship dear,  
 Lamented Anderson descends the tear,  
 While love and virtue thy sad fall bewail,  
 And glowing friendship sickens at the tale.  
 Ye tender minds which rending anguish tear,  
 Immoderate grief for fallen friends forbear.  
 Since hand unseen our secret actions guides,  
 And o'er the walks of restless life presides.  
 In this, submit to heaven's supreme control,  
 And peace once more shall smile upon the soul.

FINIS.

Whether Major Lewis became convinced during the year that Mr. Harris' ambitious hopes for his Susquehanna town were not to be realized, or whether, indeed, he intended his family should live in Harrisburg at all, is not known. It is known, however, that late in the year, October, 1792, he sold his paper to Allen and Wyeth, who, as was the custom, changed its name to that of *The Oracle of Dauphin and Harrisburg Advertiser*, issue No. 3 of which appeared on the following November 3d. The new proprietors announced that they "wanted" "An Apprentice to the Printing business, a stout, active lad, well recommended, and having a good education," who would "be taught the art of printing at the office

of the *Oracle*"<sup>1</sup>—a want, by the way, that was to be felt more than once in the years following, and one which had much to do with the career of at least one of the late editor's family. Major Eli Lewis returned in due time to the Red Lands Valley and the old home, the birthplace of his children. At this time he had six children, the eldest of whom, Dr. Webster Lewis, became a physician of considerable ability. Two more were born in the next four years, one of whom, James, became a successful lawyer, and to his artistic tendencies is due two amateur efforts at portraits of his father and mother, Major Eli and Mrs. Pamela Lewis, which are reproduced herewith.<sup>2</sup>

The year 1798 was a notable year with Major Lewis, for it became evident to him that the increased settlement about his country store warranted the laying out of a town. He procured the services of his neighbor, Surveyor Isaac Kirk, and forthwith a village was platted and christened Lewisberry, and it grew with a prosperity that many years later led to its incorporation. It would be interesting if one could state, beyond the possibility of a doubt, that this town was created in honor of the birth of the Major's last and most distinguished child; it is a fact, however, that, on May 16th of this same year, there was born to him a son who inherited many of his talents and was chosen to perpetuate the name of the first American ancestor of the family and furnish the line its most distinguished career. The Major and his wife were by no means advanced in age, as he was but forty-two and she but three years younger, but this son, Ellis, was destined to lose them both in a comparatively short time. Less than five years passed, when, on February 20th (1803) "after a painful illness," said a local paper, "which she bore as she had ever been in the habit of bearing every other dispensation of Divine

<sup>1</sup> This issue is the first in the excellent files at the State Library in Harrisburg.

<sup>2</sup> Original paintings by Dr. Webster Lewis are said to be the basis of these pen-drawings, or that of the Major at least, and this one was known to exist until within a few years past, in the possession of Miss Josephine Lewis at one time and Miss Mary Lewis—both of Philadelphia—at another, but seems to be irrecoverably lost, so that this is the only known portrait of Major Lewis. William Penn Lloyd, Esq., of Mechanicsburg, Pa., tells the author that he has a portrait of an ancestor of his own, painted by Dr. Webster Lewis, which he values highly. These portraits have been reputed in the family to be very fair likenesses in a general way.

The other children were Eliza, who married Robert Hamersly; Phoebe, Pamela, Eli, Jr., and Juliet.



MAJOR ELI AND MRS. LEWIS  
From a pen and ink copy of old portraits, now unknown,  
in possession of Miss Josephine Lewis, Philadelphia



Providence, with the strongly marked submission which gave the correctest evidence of her faith, by her works," his mother died, a devoted member of the Society of Friends.<sup>1</sup> No doubt it was the result, in large part, of the grief that such a highly sensitive poetic nature as that of Major Lewis, the father, must have felt that led him, about two years later, namely, on March 9, 1805, to appear before the meeting which had disowned him for the part he had taken in war and the test oath of loyalty to the Constitution of 1776, and offer acknowledgment for "his former misconduct," and secure reinstatement as an orthodox Quaker.<sup>2</sup> Indeed, it must have broken his life forces to a still greater degree, for his old paper, *The Oracle of Dauphin*, at Harrisburg, scarcely two years later, namely, on St. Valentine's Day of February, 1807, had occasion to announce that there died "On Sunday, the 2d inst., at Lewisberry, York County, Mr. Eli Lewis, formerly of this town, an Editor of the first newspaper published in this borough."<sup>3</sup>

Before passing from the career of Major Lewis to that of his more distinguished son, one element of the heritage left by him must not be overlooked. Although in a region in which not a few opposed the new National Constitution—the region which supported the party which suggested most of its amendments—he was, as has been seen, an enthusiastic Federalist. Nevertheless, when the upheaval occurred in 1801, that, probably through Governor McKean more than any other one man, swept the author of the "Declaration" into the Presidency, Major Lewis espoused the new democracy with equal zeal. "The Tribe of Eli"—almost all of Newberry Township—held a meeting, which was reported in the *York Recorder* of May 20, 1801, some half-dozen years before his death, and adopted the following letter to their hero:

"To Thomas Jefferson, President of the United States—

"Called on by the United States to perform the most important of her tasks, we flatter ourselves that assur-

<sup>1</sup> The *York Recorder*, February 23, 1803, in possession of Miss Mary Lewis of Philadelphia.

<sup>2</sup> Abstract of Warrington Monthly Meeting Records, 1747-1856, p. 324—at the Historical Society of Pennsylvania.

<sup>3</sup> The family records give his death as occurring on the 1st instead of the 2d, so that the paper was slightly in error.

ances of the attachment and support of any description of your fellow-citizens will be acceptable, and being highly gratified with the sentiments you have announced as the governing principles of your administration, we conceive it our duty, and we feel it our pleasure, to tender you our sincere attachment and support. May that spirit of benevolent toleration which so conspicuously distinguish you amidst the conflicting elements of party, spread like oil on the troubled ocean, until all is soothed into order and peace.

"Signed by order of the said meeting:

"HENRY KREIGER,

"JAMES TODD,

"JESSE GLANCY,

"ELI LEWIS,

"ROBERT HAMERSLY, JUN."

In May, Mr. Kreiger received, postmarked "Wash. City, May 11th," with the well-known script of the great leader of democracy on the upper left-hand corner—"free Th. Jefferson"—in lieu of postage, the following letter. Opening the seal, he read thus:

WASHINGTON, May 8, 1801.

"GENTLEMEN:

"Assurances of attachment & support from any description of my fellow citizens are accepted with thankfulness & satisfaction. I will ask that attachment and support no longer than I endeavor to deserve them by a faithful administration of their affairs in the true spirit of the Constitution, and according to laws framed in consonance with that. The sentiments expressed on my undertaking the important charge confided to me, were expressed in the sincerity of my heart; and after security & freedom of our common country, no object lies so near my heart as to heal the wounded confidences of society, & see men & fellow citizens in affectionate union with one another. I join therefore with the inhabitants of Newberry Township, who have been pleased to address me through you, in earnest desires that a spirit of benevolence and of mutual toleration may soothe the great family of mankind once more into order & peace: and I pray you to assure them of



my sincere concern for their particular happiness, and of my high consideration & respect.

"TH. JEFFERSON."

As the whole matter was undoubtedly the work of Major Lewis, the prized letter became his property and descended to his young son with a large share of Jeffersonian principles as his even more precious heritage after the Major's death.<sup>1</sup>

Young Ellis Lewis was thus left an orphan at nine years of age, but his brothers and sisters cared well for him, and, with his guardian, Mr. Hugh Foster, gave attention to his preliminary education. The boy's tastes soon began to show some similarity to those of his father, as much so, that even the following autumn, when John Wyeth announced in the *Oracle* again his need of an apprentice, it might have suggested even then such a career for young Ellis. As 1808 and '9 passed on and they heard of the success of Joseph Findley's academy in Harrisburg and a good night school during part of the year, both of which were advertised in their father's old paper, the editor, Wyeth, himself, being publicly interested in both, it must have recurred to them with increasing force. And it would be no small opportunity to a youth to be in John Wyeth's printing office, for, as was not infrequently the custom in interior towns in those days, the newspaper office was the bookstore and general literary clearing-house of the entire region. Wyeth's collection, as advertised in his paper, on November 5, 1808, contained Scott's *Marmion*, De Stael's *Corinna*, Campbell's Ecclesiastical history, Andrew's *Elements of Logic*, the chief Latin and Greek classics, Junius' Letters, etc., among the "just received" list. His announcements often included two columns of small print, and on January 28, 1809, "a partial catalogue" occupied four closely-printed columns and was "continued" through several issues in the same way. It was in both quality and quantity a really great library for that day that would have done honor to Philadelphia herself. But when the long, long contest to get the

<sup>1</sup> The letter was folded through the President's name lengthwise, and as time wore on the fold broke and the bottom ribbon of paper became lost, leaving only the upper part of the larger letters. The frank signature on the outside is perfect, however. The letter is among the Lewis papers in the possession of Miss Josephine Lewis.

State Capital away from Philadelphia and then away from Lancaster culminated in the passage of a law in February, 1810, finally settling it where John Harris had long ago proposed, the project of apprenticing young Ellis Lewis to Editor John Wyeth soon took final form.<sup>1</sup>

Late in that year, November 24, 1810, when the boy was in his thirteenth year, his brother James and Mr. Foster took him over the hills and river to Harrisburg and to the *Oracle* office and book-store in Mulberry Street between Front and Second, near the Bank, and there Mr. Wyeth agreed to teach him "the art and mystery of a Printer," take care of him for seven years, and "give him during the said term three-quarters of night schooling," and at the end two suits of "apparel, one whereof to be new." The boy was to be a dutiful apprentice and not absent himself from his "master's" service without leave.<sup>2</sup> He entered upon the office duties at once, and no doubt revelled in Mr. Wyeth's collection of books, so that by the time the State government was fully established in the old court house—predecessor of the recent one—and Governor Snyder, the successor of the original Democratic war-horse of Pennsylvania, McKean, was settled in his gubernatorial home, young Ellis had made considerable progress in the handling of the types. He often had his Quaker blood stirred by accounts of the actions during the war of 1812-15, and he always made a bonfire for the victories, but his indenture bound him to service until nearly 1818, his twentieth year.<sup>3</sup> He had been there nearly five years by the time he heard of General Jackson's great victory at New Orleans in January, 1815. Five years was a long time, and it is an especially long time at the age of eighteen, when the "storm and stress" period overtakes the young man, so the following summer he betrayed evident signs of serious discontent. His brother Eli had lost his wife

<sup>1</sup> Laws of Pennsylvania (Bioren), 1809-10, p. 30. Preparations were to be made so the removal could take place in October, 1812.

<sup>2</sup> The "Indenture" is in the possession of Miss Josephine Lewis. The author has a copy of the seal of Mr. Wyeth, which was kindly given him by the well-known antiquary at the Pennsylvania capital.

Wyeth very soon changed his location to a two-story frame building at the corner of Market Street and Square, opposite that of the Commonwealth Hotel, and on the same side of the Square farthest from the river. Here were his office and book-store. *The Oracle*, Vol. XXII, No. 1, and A. Boyd Hamilton in *Notes and Queries*, Vol. III, Third Series, p. 310.

<sup>3</sup> *Democratic Review*, 1847, p. 363. A sketch in this review says: "He illuminated for our victories during the War of 1812, when he was but a mere boy, \* \* \*."



THIS INDENTURE made the *Twenty fourth* day of

*September* in the year of our Lord one thousand eight hundred and *thirteen* witnesseth that  
*Ellis Lewis* aged *fifteen years* *months* and *days* being the *son* of *Ellis Lewis* late of *Philadelphia* County, *Penn.* doth hereby and with the consent of his Guardian *Hugh Foster* who  
 hath put him self, and by these presents doth voluntarily and of his own free will and accord  
 put himself apprentice to *John Byrd* of *Philadelphia* County, *Penn.*  
 with him after the manner of an apprentice to serve, from the \_\_\_\_\_ day of the date  
 hereof till the term of *seven years*

be completed and ended. During all which time or term, the said apprentice he's said *master*  
 well and faithfully shall serve, he's secrets keep, and he's lawful commands every where at  
 all times readily obey: he shall not do damage to he's said *master*, nor wilfully suffer any  
 to be done by others, and if any to he's knowledge be intended he shall give he's said *master*  
 reasonable notice thereof. He shall not waste the goods of he's said *master*, nor lend them  
 unlawfully to any. He shall not commit fornication nor contract matrimony within the said term:  
 At cards, dice, or any other unlawful game he shall not play. Without licence from he's said  
*master*, he shall neither buy nor sell: he shall not absent himself day nor night from he's said  
*master's* service without leave: but in all things and at all times he shall carry and be-  
 have himself as a good and faithful apprentice ought towards he's said *master*, and all he's,  
 during the said term.

And the said *John Byrd* \_\_\_\_\_ on his part, doth hereby promise,  
 covenant and agree that he will during the said term, teach, or cause the said apprentice to be  
 taught or instructed, by the best way or means he can, in the art and mystery of a *Printer*  
 and also provide for said apprentice sufficient meat, drink,

*lodging* and washing fitting for an apprentice and shall  
 give him during the said term *three quarters*  
*of his right schooling*, and at the expiration  
 of the said term, *two complete suits of ap-  
 parel*, one whereof to be new

and for the true performance of all and singular the said covenants and agreements, the said parties  
 bind themselves firmly by these presents.

Scaled and delivered  
 in the presence of

*Hugh Foster*  
*James Lewis*

*John Byrd* \_\_\_\_\_ Seal.

County, *Pa.*

DONE and acknowledged the

day of \_\_\_\_\_

Anno Domini 180

Before me,

INDENTURE OF ELLIS LEWIS  
 as a printer's apprentice,  
 in possession of Miss Josephine Lewis, Philadelphia



early in July and in writing Ellis of his sorrow, expressed a trust that he was more reconciled to his situation, but the young printer, on July 28th, replied, after expressing sympathy, boldly disabusing his brother's mind of such hopes. "I am not reconciled at all," he writes. "I like Wyeth well enough," but he did not like certain members of the household, "added to which I believe I am getting the consumption, and the business does not agree with me at all." He asks that his haste in writing be pardoned, as the 29th is publication day. His discontent grew so rapidly that before the end of the year he determined to break his bonds, and about Christmas time he made a visit to his old home and soon afterward left Harrisburg and the office. The causes that precipitated the event can never be known in all probability, but whatever it was, it left Mr. Wyeth in no mood to lose about two years of his apprentice's services, and he advertised for him, offering a reward of twenty dollars and accusing some of the young fellow's friends of abetting his escape.<sup>1</sup>

<sup>1</sup> The advertisement, which appeared in *The Oracle* of February 8, 1816, a file of which is in the private possession of Luther H. Kelker, Esq., of the Archives Division of the State Library at Harrisburg, is as follows:—

"20 Dollars Reward"

"Oracle Office, Feb. 8th, 1816"

"Absconded from this office on Sunday morning last, an indentured apprentice to the printing business, named

"Ellis Lewis

aged about 19 years, about 5 feet 1 or 2 inches high, slim built, pale countenance, and down look. He was decently clad when he went away, but as it is pretty well ascertained that he was encouraged and enticed to his desertion by those whose sense of moral obligations is equal to his own, it is probable he will be provided with funds to change his apparel. The above reward, and all reasonable expences will be paid for his apprehension and delivery to his master. All persons are forbidden harboring him at their peril. And the young man himself may rest assured, that however he may hug himself on his dexterity at running away, *justice*, sooner or later, will overtake him, to his cost.

"John Wyeth

"Editors of newspapers will please to give the above an insertion or two, and a similar favor will be reciprocated."

### CHAPTER III

#### YOUNG LEWIS RUNS AWAY TO NEW YORK AND BALTIMORE, AND FINALLY SETTLES AS CO-EDITOR OF "THE GAZETTE," AT WILLIAMSPORT, PENNSYLVANIA

1815

For over eight months no news was heard of the whereabouts of the young printer, for whose capture and return Editor Wyeth was so vigorously advertising. That he should go outside of the State and to a city where his skill as a printer could be exercised was undoubtedly a foregone conclusion. New York, which, at this very time—the mid-winter season of 1815-16—was enthused under the leadership of Mayor De Witt Clinton in the determination to secure a waterway to Lake Erie, had long been the metropolis, and Baltimore, after Philadelphia, was the next great city of the land; but the latter was so near to central Pennsylvania that his fear of discovery and belief in its greater opportunities soon led him to New York.

The Swiftsure Mail Stage long advertised "Cheap Travelling to Philadelphia" in the old New York *Courier* and its successors, "Stage Fare, \$5."<sup>1</sup> The most rapid travel from Washington to New York was thirty-six hours.<sup>2</sup> The "Swiftsure" line left No. 48, at the corner of Courtlandt and Greenwich Streets, at 8 A. M. daily, except Sundays. The metropolis had a population of almost a hundred thousand. The chief seat of the foreign trade was along East River. The wholesale region was about Pearl and Broad Streets and Hanover Square, while the retail trade was in William Street, reaching from Wall to Fair (now Fulton) Streets, and many of the families lived over their stores or shops. Broadway,

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<sup>1</sup> The New York *Daily Advertiser*, April 15, 1817, et al.

<sup>2</sup> New York City and Vicinity During the War of 1812-15, by R. S. Guernsey, 1889, Vol. I, p. 34.

below Leonard and Greenwich Streets, held first rank as an "elegant" residence street, while Pearl followed a close second. Chatham Street, with Park Row, was of like character. The boat-landings were chiefly on Washington Street. Greenwich was the most closely-built street, and some very prominent families lived in Wall and State Streets. Indeed, the built-up portion of the city was mainly for about three and a half miles from the Battery up the East River bank and but two miles on the Hudson or North River side. The post-office was at the southwest corner of William and Garden streets (now Exchange Place), and the postmaster, one of Jefferson's appointees, afforded the community about one hundred boxes and six carriers, and himself and family lived in the same building. The exchange was at the Tontine Coffee House in Wall Street, where the members, as three o'clock closed business, took dinner in the second floor ordinary.

Assuming the name Henry Van Ellenburg to elude Editor Wyeth's search, he soon found work as a printer, and also found, to his annoyance, that the field of book-making, which was a part of a New York printer's work, was one with which the *Oracle* office had not made him familiar.<sup>1</sup> He soon acquired the necessary knowledge and got along as well as a young new arrival could expect. Apparently he and his brother, James, had started off together, but James remained in Philadelphia, so when a letter from their brother, Eli, was received at New York on September 16th (1816) he secured it, forwarded it and then replied:

"NEW YORK, September 17th, 1816.

"DEAR BROTHER:

"A letter directed in your hand writing to James fell into my hands yesterday. James I believe is in Philadelphia, however I forwarded the letter to him there.

"It is now a period of more than eight months since I left the place of my nativity and never, during the whole of that time have I written to my dear relatives,

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<sup>1</sup> This was not because Wyeth did not publish books, and good ones, too, for the author has seen excellent examples of his work, notably Graydon's *Memoirs*, which was done in 1811, during Lewis' first or second year of indenture, and a German music book published in 1815 just before his departure. Mr. Luther H. Kelker of Harrisburg gives assurances that his publications were quite numerous for that date.

but you know my dear brother, you know what restrained me; therefore that is my only excuse.

"Here I am—behold me at the age of eighteen, alone and unprotected, cast on a tempestuous and unfeeling world, to do and act for myself. In a city where the most shocking immoralities \* \* \* have full sway—where every allurements is offered to seduce youth from morality and rectitude, it is scarcely to be expected that I should remain free and uncontaminated amid this chaos of immoralities;—but I believe I am as well, and perhaps better, than many others in similar situations with myself.

"In writing to you," he continues, he sends words to the family and then adds, "I would not now venture to write, but I intend leaving this city in about three weeks; I wish very much to hear from home (indeed I have a kind of hankering to be there) therefore I will look for a letter immediately on receipt of this;—I would wish to know if my affair has been settled: my indenture would be of great service to me; I read an adv't offering 20 dolls. and accusing some friends of aiding, which heaven knows was not the case. If you should deem it safe direct to E. W. Lewis 72 William St.—if you think that will not answer, my fictitious name is Henry Van Ellenburg, New York. With either directions I will get the letter but be sure and not put the No. of the street, if you direct to H. V. E.—I should like to be informed of my circumstances in the world, i. e. how much Foster has of my property, in his possession; and whether one or two lots fell to my share;—If you will take the trouble to ascertain, and sum up the whole of my property, small as it may be, it will afford me some consolation to know how much it really is.

"I am barely living, decently, not laying up much—when I came I knew nothing about book work, but now I have the presumption to call myself a '*tolerable workman*.'

\* \* \* \* \*

"My health is tolerable, but I believe I will never be *fat*, as long as I follow the printing business.—Rather than follow it another year I will go to sea as a common sailor. I have some notion of going to South



America, as a printer; three have been advertised for; our foreman promises to use his interest in getting me a birth—the result of which will be known to-morrow.

"Yours affectionately,

"E. W. LEWIS."<sup>1</sup>

Whether the hoped-for "birth" was a position on the old New York *Courier* or not cannot now be known, but, in all probability, it was, for he did join the *Courier* force under Mr. Barent Gardenier's reign, and that editor's management closed within six months from the time this letter was written, namely, on the 19th of February, 1817.<sup>2</sup> The change was made because Mr. Theodore Dwight, of the Albany *Daily Advertiser*, was ambitious to come to the metropolis, for he announced on the 20th of February that he should return as soon as he could settle his Albany affairs, which he did by April 9th, and on that date the old paper came out in new form and with a new title, *The New York Daily Advertiser*. By the 26th it was at new offices, too, at 27 William Street, one door south of the post-office. Lewis "continued in the office of the new paper," says an old friend of those days in reminiscences published in the *Printer*. "He was employed in the same offices with our late lamented

<sup>1</sup> Years later, when he had become prominent, he related some interesting details of this experience to Hon. C. D. Eldred, who gives the facts in Vol. III, No. 3, p. 55, of "*Now and Then*," edited and published by J. M. M. Gernerdt at Muncy, Pa., in 1890. Speaking of Ellis Lewis, he writes: "His ambition did not allow him to serve out his full term as an apprentice to the printing business, but with his worldly effects tied up in a handkerchief, he made his way to Philadelphia on foot in search of work. He failed to find it there and went to New York. After searching out a private boarding house kept by a widow lady, he went the rounds of the printing offices for employment, but failed in his purpose. He had not money enough to pay a week's board, and feared the denouement when his host should make demand. She made none at the end of the first week, and he renewed his exertions at the printing offices, leaving his name and the number of his boarding house at each. The next week had partly passed when, returning to his lodgings for supper with a heavy heart, he chanced to pass a busy wood-sawyer. He halted and inquired as to the pay and demand for his business, and was informed fully and particularly upon the subject. Here was work that he could and would do, until something better offered, and he went to his lodgings planning how he might sell or pawn some of his clothes for money enough to buy a wood buck and saw, and feeling much relieved by the thought. The same evening a note was left for him from one of the printing offices offering him a temporary position at a case, during the indisposition of a hand, and he accepted it with thanks. The second Saturday night he was enabled to pay his two weeks' board; but the invalid whose place he had taken was now convalescent and would soon report. He thought again of his wood saw and buck as an alternative, but was agreeably surprised to find another case given to his indisposed friend when able to work, and himself retained. From thenceforth he found no want of employment." He further tells how Lewis later visited New York and hunted up his former landlady, told her the circumstances to her great joy, and presented her a silk dress as a token of his gratitude to her as a one-time friend in need. Lewis related these facts to his friend Eldred not long before his death.

<sup>2</sup> The New York *Courier*, February 19, 1817, at the New York Historical Society. Also the *Advertiser* of date mentioned.

brother, Gen. Morris, Samuel Woodworth, one of the Harpers, and many others of the old school." During the year he became a member of the New York Typographical Society at the nomination of Thomas Snowden, and there made some of the warmest friendships of his life, especially with George P. Morris, above mentioned. Years after, Lewis looked "back to the days of my youth, spent among the intelligent and noble-hearted members of the New York Typographical Society" and avowed that his certificate of membership was "pressed with more affectionate fondness to my heart than all the other honors I have ever received."<sup>1</sup>

The year 1817 passed with plenty of hard work and hard study, for young Lewis had learned both arts, even at that date, with a thoroughness that never left him, and which recalls, in its zeal and ceaseless persistence, the habits of two great university-presidents whose flame of vitality went out all too soon. He often read in the *Advertiser* the list of books "recently published": "Ramsay's History of the United States, Gallisdon's Reports of Judge Storey's Decisions, Elements of Criticism by Hon. Henry Home of Kames, The Life and Studies of Benjamin West, Esq., President of the Royal Academy, Chateaubriand's Recollections, etc., Brackenridge's History of the Late War between the United States and Great Britain, Guy Mannering by the author of Waverly, The Works of Lord Byron, Thomson's Seasons, Warden's Letters on Napoleon, and many others." He, no doubt, noted with interest on April 12th that "The electioneering campaign in Pennsylvania is conducted with great spirit, and no little bitterness, between the two divisions of the former democratic party"; and on May 2d that the Federalists at Philadelphia have announced that they will present no candidate for Governor and that the editor thinks the "Old School" and "New School" of the democratic party will have the field to themselves; or on the 16th that "Now, Leib and Duane avow their attachments to a more refined democracy, if possible, than Findlay and

<sup>1</sup> "Typographical Reminiscences," by Charles McDevitt, in *The Printer*. The author is assured by officers of the present Typographical Union of New York that the old society became defunct and that its papers were destroyed by a fire in Fulton Street. The expressions by Lewis are from a letter quoted by Mr. McDevitt. Dwight, it should be stated, was the editor and owner of the *Advertiser*, but John W. Walker published it for him.



Binns" and that Pennsylvania seems to be the "storm center" of politics. He noted the advent in July of Moore's "new poems, so long expected"—"Lalla Rookh" and as a lover of poetry no doubt read "Southey, the present British poet-laureate." There is evidence that he studied both Latin and French during the year, too, and that all of this strain told severely upon his health.

In February (the 15th) of the following winter, 1818, he wrote his brother Eli as follows: "I am in very low health at present and have been so for some time past. Being no longer able to perform the macerating duties of my situation on the *Daily Advertiser* I have left it. Since that time I have been employed for three weeks in the first printing office, either in England, or in this country, but 'that jewel, which none know how to prize but those who've lost it,' prevented me from holding a situation there. I have been thinking about taking a voyage to Europe, under the impression that the sea-air may conduce to my recovery. I feel confident that I shall never be able to do anything of consequence at the printing business. Perhaps it would be better were I to go to the Southward. What would you advise upon the subject?" He tells his brother that he had written to Wyeth asking for terms of settlement, but had received no reply. He closes by asking pardon for the looks of the letter, as it was written in a room where "its inhabitants are keeping up, without cessation, '*vox et proterea nihil*'; besides which I have a very bad pen and no knife to mend it," referring, of course, to his quill.

As the seven-year period of his indenture expired the previous November and he had indicated his willingness to make a just settlement with his former "master," some result was no doubt effected and it is probable that his brother advised going "southward." At any rate, by June, 1818, he was in Frederick City, Md., trying to make a deal for a plant for a newspaper and printing-office, in one of two or three surrounding towns, especially Union and Westminster.<sup>1</sup> Writing from the latter place on July 3d he says: "This part of the country is thickly settled and this place is equi-distant from Fred-

<sup>1</sup> During part of the interval between February and June, 1818, it is said by a writer in the *Democratic Review* of New York, April, 1847, that the young printer was with Dr. Webster Lewis at the old home town studying medicine.

erick and Baltimore;—twenty-six miles from each. Union is five miles from here. I proposed establishing an *'Impartial Recorder,'* in the latter town, to one of its citizens, who immediately said he would become answerable for twenty subscribers, and pay the office rent himself,—and actually got twenty-eight subscribers in less than an hour—and also had a house engaged in that time for the office.” He explains his purpose to go to Baltimore and arrange the further details, and that he is to begin as soon as two hundred subscribers are secured by the gentlemen interested. He expected to do a good deal of book-work for Baltimore houses, and made his way there on July 4th. His plans involved a loan of two or three hundred dollars from his brother, and while waiting he heard of the death of the latter’s wife, which seemed about to disarrange his plans. He wrote expressing his sympathy: “Let not this weigh down your spirits. I would offer Christian consolation *but I am no Christian.* I have supported myself in sorrows (which are many and unknown) by reflections like these:—

‘Of chance, or change, Oh! let not man complain!  
Else will he never, never cease to wail;  
For, from the imperial down to where the swain  
Rears the lone cottage in the silent dale:  
All feel the assault of fortune’s fickle gale.  
Art, Empire, Earth itself to change are doom’d;  
Earthquakes have raised to heaven the humblest vales,  
And gulphs the mountain’s mighty mass entomb’d.  
And where the Atlantic rolls wide continents have bloom’d.”  
—*Betty*.<sup>1</sup>

This, of course, meant merely that he was in the agnostic period which most virile-minded young men pass who have not happened to have a tactful leading by some one in whose character and ability both they have confidence.

It should be recalled, although it is difficult to realize it, that at the time young Lewis was born it was almost entirely about the southern half of Pennsylvania that was the well-settled part, and that even so late as the year of his indenture to John Wyeth comparatively little encroachment had been made into the northern half, except up the banks of the Susquehanna and along its

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<sup>1</sup> Letter of July 24, 1818. These letters are in possession of Miss Josephine Lewis, Philadelphia.



Map Showing Distribution of Population in Pennsylvania  
in 1820, in the Census Bureau Atlas



northern branch and up the Allegheny River. And it will surprise one who has not investigated it to discover that central Maryland about Frederick City was one of the most thickly-settled regions of the United States—equal to those about Baltimore, upper Delaware and southeastern Pennsylvania and the Jersey, Hudson and New England regions. But by the time Ellis Lewis was contemplating the foundation of his "*Impartial Recorder*" at Westminster, thorough settlement had begun to press further into the northern half of his native State, with Sunbury, at the junction of the branches of the Susquehanna, as a radiating center, and the newer development was quite marked up the West Branch, the region made notable by the rise and fall of the surveyor and "land king," Samuel Wallis, some years before.<sup>1</sup> It is true, the original Lycoming County and its county seat, Williamsport, had been organized before Lewis was born, and the latter had been an incorporated borough for a dozen years past; while at this very time it was large enough to have two newspapers—the *Gazette*, owned by J. K. Torbert, and the *Advertiser*, owned by a Mr. Simpson.<sup>2</sup> So that young Lewis, even while in Wyeth's office, must have been familiar with newspaper conditions there.

Just how he became interested in Simpson's *Advertiser* is unknown, but before the summer closed he left Baltimore, and by September was in Williamsport negotiating with the gentleman for a part ownership. On September 2d (1818) he writes his brother, from the latter place, saying, among other things: "The Wednesday previous to my arrival here he [Simpson] announced to his patrons that *his* editorial duties had ceased, and that *mine* had commenced": but the effort to press the young printer into a bargain that he did not approve, made this announcement both premature and not quite accurate; for, in disgust, young Lewis went over to the *Gazette* office, where, the letter continues, "I am now employed as a journeyman with Mr. Torbett—probably I may enter into partnership with him."<sup>3</sup> He also says he has

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<sup>1</sup> John F. Meginness, in his *History of Lycoming County*, p. 66, gives a considerable account of the litigation over the Wallis lands, and their loss by the Wallis family.

<sup>2</sup> Mr. Meginness' *History*, p. 382, says the *Advertiser*, was started in 1815 and lasted about six months only, but this is an error, as will be seen by Mr. Lewis' letter.

<sup>3</sup> The Lewis papers.

transferred the subscribers he received in Lewisberry from the *Advertiser* "to Mr. Torbett's list." On the 19th he writes that he is getting "five dollars per week!" and has made an agreement of partnership to take effect on the 27th of October. He is to pay three hundred dollars by April 1st, 1819, which he considers fair, as there are three presses and various types which he describes in detail. He says Mr. Torbert's ill health had caused so much trouble that the subscription list was reduced to 357. Eight months later Mr. Torbert's affairs were in such shape that Lewis secretly bought his share of the office to head off a possible public sale of it. This was not made public, however, during that year. The same letter, namely that of May 19, 1819, frankly tells of his failure in affairs of the heart—apparently of a not very serious grade.

By mid-summer, the young editor had had many experiences. "At a time," he writes on July 15th, "when this part of the country was thinly populated (with a population, too, not the most enlightened),—a man of common talent might answer very well for an editor of a paper. But, at the present time, when the people are becoming more intelligent, and when that intelligence is increased by the constant influx of well-informed adventurers, I constantly feel myself inefficient to the management of a public print, like the one under my charge—(I may say '*under my charge*,' for Torbert has never written half a dozen lines for the paper since I entered into partnership with him). I have thought of a number of plans for the accomplishment of my wishes. At times I have thought of getting you to take the place of Torbert or myself. At other times I have thought of uniting with Wadsworth (the author of a piece signed '*Fair Play*' in our paper) in the practice of the law and the publishing of the paper. And finally of getting married as soon as I can and taking the whole of the establishment into my hands and conducting it as well as I know how, &c., &c., &c." Finally he had occasion to be the "fighting editor," in defending himself from assault by the man Simpson—who seems to have dropped his paper and become a kind of legal practitioner,—because he refused to print an article containing personalities. In-



deed, this former editor of the defunct *Advertiser* became an avowed enemy and attempted to make capital out of the old Wyeth affair. He had threatened to have the citizens call Lewis "a Federalist" and thereby "d—mn" Lewis, to quote the belligerent's language, but it was all in vain.

A single copy of the *Lycoming Gazette*, "New Series, Vol. II, No. 11," issued on January 5, 1820, with the motto "Be just and fear not.—Let all the ends thou aim'st at be thy COUNTRY's, thy GOD's, and TRUTH's,"—the only copy during his reign known—indicates a paper in prosperous condition.<sup>1</sup> Mr. Torbert advertises that all debts must be paid him at once or suit will follow. This indicates the seriousness of Lewis's purpose to get one of his brothers to buy out Torbert. In a letter of April 22d following this issue he tells his brother that Torbert will now sell for \$600; that the whole proceeds of the office for eighteen months past is estimated at \$3,290; that the subscription is valued at \$1,500 annually; and that the job work from April, 1819 to April, 1820, brought over \$751. He wants to do some book work, but his partner is timid; he believes a compilation of certain laws would sell well. He is determined to close with Mr. Torbert at the end of the year, and advises his brother Eli to come and examine the situation. "We will support Mr. Findlay in preference to Hiester or perhaps any other candidate that may be nominated," he writes, the first note of entry into State politics. He also avows he is "really in love in earnest," and also that he desires his "certificate"—from the Friends Meeting no doubt—"for I have a notion to be religious—at least much more so than I have been."<sup>2</sup> With this, the period of "storm and stress" and "*zwander lust*" had apparently closed and he was an established editor, with all the opportunities of central Pennsylvania before him.

<sup>1</sup> This copy is in possession of the historical collection of the Pennsylvania State Bar Association at the University Law School, Philadelphia. In a letter to the *Lycoming Gazette*, years later, he says he gave it a motto from Henry VIII.

The earliest copy known, namely, one of 1808, is in possession of J. H. McMinn, Esq., of Williamsport. The next after that is one of January 10, 1810, issued on Wednesday and numbered 26, of Vol. III, and is in possession of J. M. M. Gerner, Esq., of Muncy, Pa. Mr. McMinn also has a mutilated copy of an issue of 1818. Tunison Coryell left a fine file which was placed in an old public library in Williamsport which went into decay, and his son, John B. Coryell, Esq., of the same city, one day found them so nearly destroyed that he succeeded in saving but a small remnant.

<sup>2</sup> The Lewis letters in possession of Miss Josephine Lewis, Philadelphia.

## CHAPTER IV

### THE YOUNG EDITOR STUDIES LAW, AND IS ACTIVE IN PUBLIC AFFAIRS. HIS ABILITY AS AN INDEPENDENT STUDENT

1820

The smaller interior towns at this period demanded both the editor and the lawyer, but for a man who had abilities to equal the expectations in both cases, the returns were not always sufficiently remunerative. It was a very common thing, therefore, for men to unite the two in themselves, not only for this reason, but because such a combination was peculiarly fitted to open the way to a public career. The young editor's brother, James, at York, like many another over this and other States, had made this combination, for he had studied law and was now part owner of the *Recorder*, of that borough. He was attracted to the opening at Williamsport, and in June (1820) proposed buying Mr. Torbert's share in the *Gazette*, instructing Ellis in the law and becoming an equal partner in both professions. While the latter was a devoted admirer of his brother Eli and had great confidence in his wisdom, this proposition from James seemed to be so perfectly adapted to his secret aspirations that he plainly manifested his pleasure at the prospect. The offer came, too, at a time when he felt the need of companionship and a more engrossing interest, for, like many another before and since his time, he seems to have had another unsuccessful love affair and with stoical resignation argues that two courses are open to him: to sell out and leave, or have James come in as partner and begin "intense application" to business and to law in his "leisure hours"—as if "intense application" had not been his constant habit for years past!

The most significant occurrences during this month of June, however, were those that indicated the desire



of the young editor for a part in public affairs. He wrote his brother, Eli, then postmaster at Lewisberry, that he wanted the office of Register and Recorder at Williamsport, in case Mr. Tunison Coryell was to be displaced. He believed his relation to Governor Findlay, as well as to the people, warranted him in the belief that he could secure the position. His standing, he said, was due to the fact that he had championed the cause of "the plain, blunt men," the common people, often in opposition to the influential element, generally known as "the Hepburn connexion." In this he had been strengthened the previous winter by a public address he had made, by request, in a debate at Jersey Shore on the Missouri compromise question, and the letter of June 24th, in which this event is described, manifests an incipient skill in managing a campaign in public affairs. His brothers, however, both discouraged this particular plan for the offices mentioned, and he yielded to their judgment; "this," said he, "I feel the less reluctance in doing, as we are likely to [be] drawn into more warmth on the subject of Mr. Findlay than we at first expected, and my motives might be misconstrued by the opponents of Mr. Findlay." This course proved to be a wise one, for this Governor of Pennsylvania, who had been in office since 1817, during which time he had laid the corner-stone of the new capitol, was now up for reelection against a rival Democrat, with an equally distinguished career in the public life of the State, Colonel Joseph Hiester, of the Berks County family so well known in the previous public life of the State, and party spirit ran so high and the assaults on the Governor were so bitter that his rival was successful.<sup>1</sup> This incident, however, served to show that Ellis Lewis had, at the age of twenty-two, "found himself" at last, and that his abandonment of the purpose to enter public life was

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<sup>1</sup> Governor William Findlay, 1768-1846, was in the Legislature in 1797 and 1803, and from 1807 was for a decade State Treasurer. After his defeat a compromise sent him to the United States Senate for one term, and from 1827 to 1840 he was treasurer of the Mint at Philadelphia. He died in Harrisburg in 1846.

Governor Joseph Hiester, 1752-1832, a cousin of Daniel and John Hiester, both prominent in public life of the State, was a Colonel of the Revolution, a member of both State Constitutional Conventions, and of both Houses of the Legislature, a Major-General of Militia, and a Congressman from 1797 to 1805 and from 1815 to 1820, when he resigned to take his last post in public life, the Governorship. He died in Reading in 1832.

only a temporary concession to the combined wisdom of his two brothers.

James had not come to a positive decision by the 20th of July, the end of a new quarter when Ellis had determined to close his relation with Mr. Torbert, and he thereupon purchased the entire plant himself, in hopes of the favorable action of his brother. He was much depressed during the summer and urged Eli to come and take the entire plant and let him get away for awhile. He made a visit to his old home late in the year, and incidentally visited Wyeth's book-store for the first time since he took leave of it. He did an excellent business for a year more in his management of the *Gazette*, but his eyes had been turned more and more to the law, and as he dipped into it increasingly and was influenced by James in the same direction, although the latter found himself unable to make a partnership, he concluded to dispose of his paper in July, 1821, to his friend, Tunison Coryell, and devote himself wholly to the law.<sup>1</sup> It is not known just when he began the study of the law, but so early as the middle of 1820 he has been seen to know enough about the laws to have a publication in mind, and it is also known that at this very time the Deputy Attorney-General for Lycoming County was Espy Van Horn, Esq., who had then been in office a year and who is known to, at some time, have been Mr. Lewis' preceptor. It is said, also, upon the same authority,<sup>2</sup> that he succeeded Mr. Van Horn at this very date and served for 1820, but it seems as if his correspondence must have had some reference to it, even if he were his preceptor's assistant only, and that is all he could have been, for

<sup>1</sup> In Mr. Meginness' History of Lycoming County, p. 380, he states that this sale occurred, but mistakenly speaks of a partnership between Brindle & Lewis—probably a typographical error. On p. 290 he states that Mr. Lewis was Deputy Attorney-General for the rest of 1820—an error also. In a manuscript left by Tunison Coryell to his son John B. Coryell, Esq., of Williamsport, on p. 22, he says: "In 1821 I purchased the *Gazette* of Ellis Lewis, which had only four hundred subscribers." He then describes how he, Coryell, increased its circulation and finally sold it in August, 1823, namely, he got the Tioga people to agree to take 200 copies if he would secure them a mail route, and he succeeded. He says also that he was instrumental in getting Lewis to join Torbert, and explains that Torbert had been a teacher and was the author of "Torbert's Arithmetic," a school-book of the day. He also adds that Lewis boarded with him while studying law in Van Horn's office—"he was an industrious reader & was first admitted to practice in the courts of Lycoming County. He had but a small practice and became discouraged and after much persuasion on my part prevailed on him to persevere and not attempt to change his situation," and that as he had "put the plow in operation not to look back and that he would eventually succeed."

<sup>2</sup> *Ibid.*

he was not yet admitted to the bar. In a letter of March 2, 1822, nearly a year after he disposed of his paper, he writes his brother, Eli, who had evidently tried to persuade him to study in York, that he believed "it would be better to finish my studies in this place"—that is, Williamsport. He was prospering, however, whatever he was doing, for on July 27th following he says he is now free of debt, except what he owed Eli, and on the 3d of September (1822), after examination by three attorneys, Thomas Burnside, Samuel Hepburn and Alem Marr, he was admitted to the bar.<sup>1</sup>

He had become a great favorite in Williamsport and was readily recognized by leaders there and over the State as a force to be reckoned with in democratic politics. To Mr. Torbert he was such a hero in wresting success from failure, in newspaper management at least, that the latter named a son Ellis Lewis Torbert, about two months before the admission to the bar above mentioned. His brother, Eli, meanwhile had gone to York and become an owner of a paper there, probably with James, so that with Ellis' influence in the journalism and politics of Williamsport and Eli's and James' power at York, the "tribe of Eli" was an even larger influence than in the days of the author of "St. Clair's Defeat."<sup>2</sup> And one event occurred which extended this influence, and that was his own marriage into the Wallis family, made famous in that region by the career of the surveyor and "land-king," Samuel Wallis, and his half-brother, Joseph Jacob Wallis, a partner in many of his enterprises, in the closing years of the preceding century. The event occurred on November 21st (1822), and on the 30th, he writes his brother: "I am now, I believe, permanently fixed in this place. I am married to the daughter of Mr. J. J. Wallis, one of the gentlemen who called at your office to see me, when I was in Your county about a year ago." It seems that when he came to the real affair of the heart, it was, as is often the case, the one on which he preserved most silence. Miss Josephine

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<sup>1</sup> His certificate of admission among the Lewis papers gives the date as September 3d, not 2d, as Mr. Meginness' history has it. His examiners' names are given by the latter, and are believed to be correct.

<sup>2</sup> In a letter of July 27, 1822, stating some of these facts, Mr. Lewis shows that but little cash was used in the Williamsport region. Individual paper was used a great deal—"for almost everything goes by *trade* here," he adds. There was "paper" and "par-paper," terms that were constantly in use.

Wallis, born January 2, 1804, and thus about six years the junior of Attorney Lewis, was the daughter of Joseph J. and Elizabeth Wallis, of Williamsport, so that they were respectively twenty-four and eighteen years of age. They were inclined to look upon marriage as a "stern reality," as the young attorney expressed it in his letter, and later events proved both the happiness and the wisdom of their mutual choice.

Professionally, he was forging ahead. "I am concerned in a murder case to come on next week," he continues, in the same letter,—“fee \$90—a habeas corpus case fee \$20—a certiorari, fee \$10. An assault & battery and disturbing religious meeting—[not plain]—and several in Tioga. I think I shall get into business here.” By the following spring he was equally successful. "I am very well satisfied with the practice of the Law," he writes on March 4th (1823). "My business as might be expected is not very extensive. But it is as much so as I could reasonably have anticipated." He also considers his citizenship a part of his life business and proposes to be a force in it. The letter above mentioned was written on the day of the democratic State convention. "This day," he writes, "will, I suppose, decide who's to be our governor. I trust that George Bryan," a son of President Bryan, of the Revolution, "will be nominated—and should very much wish him *supported*, or at least not warmly *opposed*, by my friends in York—I want nothing for myself, and while I am able to practice law shall ask nothing. But I have a most anxious desire, as we all ought to have, to see Mr. Hamersly continued. Should Mr. Bryan be elected I have the strongest reason for believing that I could speak to him through my friends in a language that would be heard, and thus be enabled to throw a mite along with the general exertions which might be made for Mr. Hamersly."<sup>1</sup> Mr. Bryan was not the nominee of the convention, however, and Mr. Lewis and his friends were compelled to accept the candidacy of Mr. Shulze. In a letter of the 24th, however, he says he knows but one man, Wadsworth, who is personally acquainted with Shulze, and while he thinks Mr. Wadsworth would do anything for him that

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<sup>1</sup> Mr. Robert Hamersly, as will be recalled, was his brother-in-law.

he could, he sees hope for his brother-in-law only in a prudent personal course.

The candidacy of the nominee was not generally acquiesced in in many parts of the State, and there were meetings for revolt. "We have had a meeting here," he writes on May 10th, "in opposition to Mr. Shultz. My father-in-law was secretary of the meeting. I was first nominated for secretary, but I rose and declined—stating that I had a *small notion* of supporting Mr. Shultz, and alleging other reasons in excuse. In Center County they have had a meeting of the same complexion. In case Bryan should be nominated and consent to run, I think there is little doubt of success. In answer to your inquiry what course the Lycoming Gazette will take in that event, I state *confidentially* that Mr. C's friendship for Mr. B. will make it impossible for him to oppose him actively, while, at the same time, he has gone so far in favor of Shultz since the nomination, that the paper cannot consistently with-draw itself from Mr. S. A sale of the establishment I think is in contemplation to extricate the editor from an[y] difficulty on that score, should it occur."



## CHAPTER V

THE POLITICAL SITUATION IN PENNSYLVANIA. HIS  
CHAMPIONSHIP OF GOVERNOR SHULZE. HE BE-  
COMES THE DEPUTY ATTORNEY - GENERAL  
FOR LYCOMING AND TIOGA COUN-  
TIES. A DISASTROUS ILLNESS

1823

To understand the political attitude assumed by Ellis Lewis in the summer of 1823, as indicated in these letters, it must be recalled that the "Sage of Monticello"—author of the "Declaration" and leader of the great upheaval against the Federalist Republicans by the Democratic Republicans in 1801, was still alive and exercised a tremendous influence in occasional letters sent out from his Virginia retreat. Said he in a letter to the Lieutenant-Governor of Kentucky in the previous summer, "in the civil revolution of 1801, very many and very meritorious were the worthy patriots who assisted in bringing back our government to its republican track. To preserve it in that will require unremitting vigilance. Whether the surrender of our opponents, their reception into our camp, their assumption of our name, and apparent accession to our objects, may strengthen or weaken the genuine principles of republicanism, may be a good or an evil, is yet to be seen. I consider the party division of whig and tory the most wholesome which can exist in any government, and well worthy of being nourished, to keep out those of a more dangerous character. We already see the power, installed for life, responsible to no authority, for impeachment is not even a scare-crow, advancing with noiseless and steady pace to the great object of consolidation; the foundations are already deeply laid, by their decisions, for the annihilation of state rights, and the removal of every check, every counterpoise to the ingulfing power of which themselves are

to make a sovereign part. If ever this vast country is brought under a single government, it will be one of the most extensive corruptions, indifferent and incapable of a wholesome care over so wide a spread of surface. This will not be borne, and you will have to choose between reformation and revolution. If I know the spirit of this country, the one or the other is inevitable. Before the canker is become inveterate, before its venom has reached so much of the body politic as to get beyond controul, remedy should be applied. Let the future appointments of judges be for four or six years, and removable by the president and Senate. This will bring their conduct, at regular periods, under revision and probation, and may keep them in equipoise between the general and special governments. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the King; but we have omitted to copy their caution also, which makes a judge removable on the address of both legislative houses. That there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency."<sup>1</sup> The intense conviction and apprehension exhibited in this letter animated most of his followers, especially in the State which had, as has been said, made his dominance possible through the fiery leadership of Governor Thomas McKean, who had died but a half-dozen years before; the great victory of 1808, when the man of the people, the late lamented Simon Snyder, was made chief executive of Pennsylvania, also seemed to add to intensity of conviction the confidence which is begotten of success.<sup>2</sup>

The passing of the old leaders of the revolution and the chaos of a seething political caldron of candidacy for new leadership all combined to make the next governorship, that of William Findlay, a most stormy one, and the next, namely, that of Joseph Hiester, scarcely

<sup>1</sup> Letter to Lieutenant-Governor Barry of Kentucky, from Thomas Jefferson, dated at Monticello, July 2, 1822, in the *Franklin Gazette* of Philadelphia, of January 11, 1823.

<sup>2</sup> Simon Snyder, 1759-1819, was a native of Lancaster and resident of Selinsgrove, Pa. He was in the convention that framed the Constitution of 1791; the House of Representatives in 1797 and was Speaker in 1802, and for six successive terms; was Governor in 1808 and Senator in 1817. Snyder County bears his name.



less so. It was a period of leadership that was a contest between the merely political leader and those who were believed to aim at the standards of the old statesmen. It was a war between the tendencies to the dominance of those with Federalist leanings within the Republican party and those who were the original Democratic Republicans, and it was the more bitter because a war of tendencies. "A variety of circumstances," said the editor of the *Franklin Gazette*, describing those two administrations, "familiar to all, many years since, produced a partial secession from the great body of the party, the individuals attached to which were but too apt to throw their weight in the scale of their old political opponents. The result of the last election of Governor [Hiester], produced by a similar but more extensive amalgamation, has afforded such a demonstration of its disastrous consequences, that the most sceptical have become convinced that the supposed errors of their democratic brethren are secondary in comparison with the effects of Federal misrule.—The predicament was indeed novel in which democratic Pennsylvania found herself placed by the eccentric course of the gubernatorial election. Governed by principles which, in the hour of political trial she was the first to repudiate, receiving into her councils men whose unpopular and anti-national principles had long before consigned them to their proper sphere, the shades of private life, her situation was both irk-some and unnatural. The feverish irritability that produced this morbid action soon subsided. Thousands have rejoined the party who had been long estranged from it, convinced from the experience of the last three years, that in any union of democracy with federalism, the former must necessarily be injured."<sup>1</sup>

The territorial expression of the contest between Findlay for a second term and Hiester, the successful candidate, was very curious: With a few exceptions on both sides, it may be said that generally the old settled part of Pennsylvania, say all south of a line drawn from Trenton to Altoona and down the Allegheny ridge, went for Hiester, while the rest of the State stood by Governor Findlay. In consequence, Ellis Lewis, when he took

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<sup>1</sup> Issue of March 28, 1823. Norvell was the editor.

an independent stand for Governor Hiester was in opposition to the prevailing sentiment on the upper waters of the Susquehanna, both east and west. And it was, in a general way, the latter element which favored the nomination of George Bryan, of Lancaster, or reluctantly acquiesced finally in the nomination of John Andrew Shulze in 1823.

In leadership this contest was expressed even more curiously. The previous year there had died in Philadelphia a man who had been a most powerful political leader of the Jefferson party, Dr. Michael Lieb, 1759-1822, then the city's postmaster, but one-time Congressman and United States Senator. His colleague in political leadership was a remarkable journalist, named William Duane, 1760-1835, editor of *The Aurora*, of Philadelphia, the sometime most powerful Jefferson paper in the United States, one which Mr. Jefferson acknowledged, it is said, as the most effective journal in his elevation.<sup>1</sup> Duane had gradually dropped out of journalism though after the removal of the capital to Washington. Allied with these had been Alexander James Dallas, of Philadelphia, 1759-1817, and his son, George Mifflin Dallas, 1792-1864, the former of whom had been a most distinguished cabinet officer, and previous to his death had been United States District Attorney for the Eastern District of Pennsylvania, while the latter was at this very date Deputy Attorney-General for Philadelphia, and his brother-in-law, William Wilkins, 1779-1865, was the President Judge of the "old Fifth District" at Pittsburgh. Into this situation years before had come a protégé of Editor Duane, whom the latter had met in London, namely, John Binns, 1772-1860, an Irishman who, after his imprisonment at home as a revolutionist, had come to Baltimore in 1801, and the following year had established a paper in Northumberland, near the forks of the Susquehanna, called the *Republican Argus*. Binns became

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<sup>1</sup> Duane had a remarkable career. Born in New York in 1760, he was educated in Ireland, became rich as a journalist in India, was captured by the Sepoys and finally returned to London, where he edited the *General Advertiser* (afterwards merged with the *Times*), and in 1795 became editor of the *Aurora* in Philadelphia. Jefferson made him a Lieutenant-Colonel in 1805 and he served in the War of 1812. After the Capital was removed to Washington he left the *Aurora* and traveled and wrote books for many years. He finally came back to Philadelphia and closed his days in the same way that his latest successor is doing, in the office of Prothonotary of the Supreme Court for the Eastern District.

a powerful supporter of Snyder both the first time, when unsuccessful, and the second time, when successful. He was encouraged to come to Philadelphia even before he went up on the Susquehanna, by the editor of the *Aurora*, and on March 27, 1807, he had done so. Duane advised him against the title he had chosen for his paper—"The Democratic Press;" recalling to him that Jefferson himself had said: "We are all Republicans; we are all Federalists," and insisting himself that "The word *democrat* or *democratic* is not used indeed, or scarcely known, as applied to politics or parties."<sup>1</sup> Mr. Binns persisted, however, and said he, "It was the *first* paper published in the Union, or anywhere else, under the title of DEMOCRATIC, and it was some years before the title was adopted by any other newspaper or by the party. It, however, in time, won its way into public favor," and the *Democratic Press* became the successor to the power and influence of the *Aurora*. It was thought to have elected Findlay, and because he favored General Hiester in 1820 instead of Findlay, he was roundly charged with Hiester's success by the opposition and dubbed "The Apostate," by his rival, the *Franklin Gazette*, which was, since his championship of Governor Hiester, coming to receive the favor of the conservative managers. This was recognized by Mr. Binns, and in his issue of February 4th, 1823, it was expressed by his endorsement of a quotation from another paper, which was a friend of the candidacy of George Bryan:

"*New Catechism for a Federal Proselyte.*"

Q. What is Democracy?

A. *The Franklin Gazette.*

Q. Explain its principles.

A. *Offices for the Family.*

Q. What do you understand by the term 'Family'?

A. *Thomas Sergeant, George M. Dallas, Richard Bache, T. B. Dallas, W. Wilkins, &c.*

Q. Do you believe the *Franklin Gazette* is the oracle of the Party?

A. *I do—because the Family say so, and through it expect honor, office and a competency.*

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<sup>1</sup> Recollections of The Life of John Binns, by Himself, 1854, p. 197.



EDITOR JOHN BINNS  
From an engraving in his autobiography



Q. You are admitted a Democrat. Remember INGHAM and ADAMS is the word!"<sup>1</sup>

Mr. Binn's paper, however, accepted the candidacy of Shulze, and the fight was then on against the Federalist candidate, Andrew Gregg.

And why should the gubernatorial election be the center and circumference of Pennsylvania State politics? Important as it is now, it does not in any degree approach the place it had in politics at this period, so that it is difficult for a citizen of the twentieth century to fully realize its significance, although the cause of it can be easily stated. This cause was the fact that nearly all public offices in the State and counties were filled by appointment of the Governor, under the constitution of 1790, then in force. This made the gubernatorial patronage simply astounding, at least to the eyes of one accustomed to the extensive elective features of the present constitution.<sup>2</sup> And it made the task of a governor next to impossible of accomplishment without sowing seeds of discord in every nook and corner of the Commonwealth. It was Governor Hiester's efforts to conciliate all elements by a distribution of these offices that was one fruitful source of the bitterness against his administration and all who favored it. Mr. Binn's appointment as an alderman of Philadelphia especially enraged the now dominant element, and they attributed to this the source of the "apostacy" of the *Democratic Press* and its editor in the last gubernatorial election. All were now agreed on Shulze, except his defeated rival, George Bryan, of Lancaster, whose public letters to this effect were made the butt of ridicule by both the *Gazette* and *Press*.

"Who is Shulze?" said the Bryanites and the Federalists, and it may be well to gain some idea of the man to whose cause Ellis Lewis, of Williamsport, attached himself. He was born in Berks County in 1775, the son of Rev. Christopher E. Shulze, a native of Saxony, who was educated at the universities of Jena

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<sup>1</sup> Ingham was one of the candidates for Governor before the convention finally decided on Shulze.

<sup>2</sup> Article II, Section VIII of the Constitution of 1790-1: "He shall appoint all officers, whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for," etc.



and Halle and was a professor in the latter. The father came to America in 1765 and became a German Lutheran pastor in Philadelphia and in Berks County, and married the daughter of Rev. Dr. Henry M. Muhlenberg. The son, John Andrew, was educated for the ministry in Lancaster and New York under the supervision of his father and uncle. He was finally ordained to the ministry and served in Berks County for six years. In 1802 ill-health compelled him to do something else, and he became a merchant with eminent success. He served in the Legislature and declined an appointment as Surveyor-General under Governor Snyder, who then appointed him to the various clerical offices of Lebanon County. He was elected to the Legislature again and in 1822 to the Senate for Dauphin and Lebanon.<sup>1</sup> He was accustomed to success in elections, and when the complete returns came in in October he had carried the State by over 25,000, the only regions giving a majority to his Federalist opponent being Philadelphia city, Delaware, Bucks, Chester, Lancaster, Adams and Luzerne Counties.<sup>2</sup>

The "small notion of supporting Mr. Shultz" which Ellis Lewis held on May 10th developed into vigorous championship, so that with Shulze's election he claimed two offices for himself and Coryell, and his own was the Deputy Attorney-General's office. "I have this moment returned from Harrisburg," he writes his brother on January 24, 1824, "and hasten to answer your letter. \* \* \* We have had a hard struggle to get Coryell appointed. His opponents were first *Turk*, then *Wood*, and lastly *Col. McMeans* himself. After a great deal of squabbling in Harrisburg on the subject I succeeded on Tuesday last in getting the commissions in my pocket. This will be an advantage to me—and to say the least of it, I needed it much—the former *proty* [prothonotary] and *SHFF* [sheriff] being both friendly to others deprived me of all the business they could—the appointment of Deputy Atty Genl will also help me some— \* \* \* was sworn in on Saturday last. \* \* \* I was appointed through the recommenda-

<sup>1</sup> From the *Pennsylvania Intelligencer*, reprinted in the *Franklin Gazette* of May 13, 1823. Also Lamb's Biographical Dictionary.

<sup>2</sup> The exact majority being 25,802, according to the *Franklin Gazette* of November 1, 1823.



tions of Judge Chapman and his associates of Lycoming County, Judge Herrick and his associates of Tioga and both our members,—with many other warm friends. But McMeans and Burnside are *flatly* against me." He adds that the latter tried to secure Van Horne's appointment, when Van Horne and Lewis had a mode of agreement of their own, by which it was to be decided which should make application.<sup>1</sup>

The young Deputy Attorney-General of these two counties had now been victorious in journalism, law and politics on a local scale and was generally recognized as on the high road to success.<sup>2</sup> As he was deputy for both Lycoming and Tioga it seemed wise for him to live for a time at least in Wellsborough, and he moved there during the year 1824. His bright prospects were suddenly and seriously threatened, however, by the appearance of a disease in one of the lower bones of the leg. On January 14, 1825, he writes from his new home: "The hand of affliction has been long and heavy upon me. Ever since November I have suffered and been entirely unable to attend to business, by reason of a sore leg. I had to send twenty-seven miles for surgical aid; but instead of amputating, it has been opened to the bone as many as five or six times; it is a little better now, but I am sometimes fearful that I shall have to lose it—I was prepared for amputation in the early stage of the complaint and could have borne it freely, but I have been reduced so very much that I feel as if I dread it now." By the following month his condition was so serious that Mr. Wallis' family desired him to be brought back to Williamsport where they could give him more attention. This was done, and on February 5th, he writes Eli Lewis at York that he is unable to attend to any kind of business, and that Mrs. Wallis' care has improved him somewhat. "No man," said he, "can sufficiently understand the agony of mind I experienced when, after removing to Tioga, using every exertion, late and early, and at last gathering sufficient to place

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<sup>1</sup> This commission, among the Lewis papers, bears date of January 13, 1824, under the hand of Attorney-General Frederick Smith.

<sup>2</sup> Tunison Coryell, in his manuscript autobiographical notes, in possession of his son, John B. Coryell, Esq., of Williamsport, says that as Deputy Attorney-General he "won the respect of the senior bar," and that he had "a strong legal mind."

me entirely out of debt, and having business enough to ensure a good living—suddenly every hope—every cheerful anticipation was blasted by the dreadful stroke under which I am now suffering—my business necessarily neglected—my little stock of money dwindling away—and the bark which I had rowed up stream with so much toil rapidly descending to the place from whence I started.” He was still hopeful, however, and stated that he was building a house in Wellsborough and should go up there in the spring again.

The hopefulness of the ambitious young Deputy—or, as the office is now called, District Attorney—was well founded, and in due time he was in his Wellsborough home, a two-story log-house, about the site of the Packer residence. Courts had been held in Wellsborough—as it was then spelled—scarcely more than ten years, and there was but one other resident attorney there—a William Patton, and he died in 1823, so that to many Ellis Lewis was ever after known as the first resident lawyer, and therefore “the father of the Wellsborough bar.” This log-house, which was his first home there, was two stories high. He used the upper floor as an office and, in order to economize space, used a ladder to reach it, drawing it up after him. At the appearance of a visitor who wished to interview the Deputy Attorney-General, Mrs. Lewis called to him, the ladder was lowered and the visitor climbed to the source of the law.<sup>1</sup> Law students ascended by this means also, for at least one is known to have begun in April of this very year, 1825, namely, Hon. James Lowrey, 1802-1875<sup>2</sup>. And it may be noted that during the summer another friend called more than once, Dr. William Garretson, a cultivated man who had been reading medicine for sometime past with Attorney Lewis’ brother, Dr. Webster Lewis, of Lewisberry, and now made Wellsborough his home, and by September 13th following was so well advanced in the law also as to be admitted.<sup>3</sup> What is more, his office also became, late in the year,

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<sup>1</sup> A History of Tioga County, 1897, pp. 153-4 and 317. While this volume is inaccurate regarding Lewis’ life elsewhere, it seems reliable on his life at Wellsboro. Mr. Garretson became so well-known that Buchanan, when Minister to the Court of St. James, offered him the post of private secretary, which he declined.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*



Mrs. ELLIS LEWIS  
From a daguerreotype in possession of Miss Josephine Lewis,  
Philadelphia



the first editorial rooms in Wellsborough, for his nephew, Rankin Lewis, probably a graduate of Eli Lewis' printing office in York, was persuaded to start *The Tioga Pioneer*, with his uncle Ellis as editor, and launched the first number on December 3, 1825.<sup>1</sup> The motto was significantly different from that of the *Gazette*, for it held that "knowledge is power—is wealth—is happiness." It is possible that Garretson often contributed to its columns and gained the ideas that made him its editor some years later. The printing outfit had been secured at Sunbury and the paper put on a basis that carried it for over a year. His condition and the amount of business as Deputy Attorney-General led him to conclude to devote himself only to Lycoming County, and on January 27, 1827, Attorney-General Frederick Smith commissioned him for that county alone, and he gave up the paper, which was sold to interests in a rival town. It should be stated at this point that while at the bar in Williamsport he had the leading influence in securing the establishment of the United States Court there and had a considerable practice in that tribunal. One case in this court comes down to us. "A number of years ago a fugitive slave was rescued from the possession of his owner, in the town of Danville, Pennsylvania," says a writer in the *Democratic Review*,<sup>2</sup> "through the instrumentality of a writ of *homine replegiando*. The Hon. David Petriken (who subsequently acquired in Congress the cognomen of '*previous question*,') was the prothonotary who issued the writ. An action of trespass, and separate actions for the penalty of five hundred dollars, under the act of Congress of February 12, 1793, were brought against him, and each of the persons engaged in the issuing and service of the writ; and after the collection of several penalties, with costs, from some of the most responsible parties, Mr. George Sweeney, an editor of a public journal, was lodged in jail for the penalty recovered against him for the same rescue. So high was Ellis Lewis' reputation for abilities, and a knowledge of the practice in the United States Court,

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<sup>1</sup> Years later, March 9, 1833, the *Towanda Northern Banner* stated that its own name was originally used by Ellis Lewis in Tioga County, as it was informed.

<sup>2</sup> The *Democratic Review* of New York, for April, 1847, p. 359.

that Mr. Sweeney supposed he could extricate him, even after his other counsel had failed, and after judgment had been recovered against him; and he accordingly sent a distance of nearly a hundred miles to engage his professional services in his behalf. His expectations were not disappointed."

During 1827, his leg, which had caused him more or less trouble ever since his first attack, grew worse as the year wore on, and on November 4th, he writes Eli at York: "I have been long confined unable to rise from my bed and a great part of the time unable even to stir myself without assistance. It is occasioned by the sore leg with which I have been so long afflicted. \* \* \* \* I am now just able to sit up. I wrote for Webster. \* \* \* I think it probable that as soon as I can be got able to ride I will have to go to Phila. to have a consultation, and amputation of my leg if necessary—I begin to fear that nothing else will save my life—and I am so far gone that I am not certain even that will. If Webster should come I shall do as he advises of course." Dr. Lewis and his brothers, Eli and James, at once urged that Ellis be brought down to the doctor's home in Fairview Township, and on December 8th Ellis writes from there: "I have arrived at Webster's with Josephine at last. Mr. Wallis brought us down in his carriage."<sup>1</sup> He was detained in Williamsport a week and improved enough so he could stand a forty-mile ride to Northumberland. A stop was made here, and at Halifax and Harrisburg for as many nights. The next day Dr. Lewis and Dr. Roberts, of Harrisburg, performed an operation, which revealed that about an inch and a half of length of the *tibia*, or large bone of the lower leg, had been destroyed by necrosis, and that a shell of new bone had entirely surrounded the dead bone, except two apertures. In a delicate operation, and most successful one for the period and region, the dead matter was removed. "Ellis bore this tedious and painful operation with great firmness—even amounting to heroism," said Dr. Lewis in a letter on December 9th to Eli—"never once flinching in the slightest degree—he even occasionally interrupted us with a joke. He is

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<sup>1</sup> He was carried down on a stretcher (see C. D. E. in "*Now and Then*").

now in high spirits." He also says that he wishes they could persuade Ellis to settle near them, as a rapid recovery was entirely probable.<sup>1</sup>

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<sup>1</sup> Dr. Lewis' letter describing the disease and operation ought to be among the records of Pennsylvania surgery. It is now in the possession of the College of Physicians, Philadelphia.



## CHAPTER VI

### HE SETTLES AT TOWANDA, AND IS SENT TO THE LEGISLATURE AS AN INDEPENDENT, BUT SUPPORTS GOVERNOR WOLF

1829

Just how long the Deputy Attorney-General was convalescent is not known, but there is reason to believe that it was long enough to last well into the year 1828, and that he found it wise to remain near the Wallis home in Williamsport, where he could receive good care and at the same time be near enough to his business in the various counties about the forks of the Susquehanna. During January, however, his condition was such that he concluded to forward his resignation to Attorney-General Smith. The latter replied on the 9th of February, stating that he had received his letter of the 4th instant containing his resignation on account of ill-health. "I most freely declare," he added, "that you conducted the prosecutions of the Commonwealth, constantly, to my entire satisfaction; no indictment of yours having been quashed to my knowledge."<sup>1</sup> His fears were not realized, however, for he steadily improved and soon began to look after his business there and in the surrounding counties. Bradford, immediately east of Tioga and northward of Lycoming, was growing in a most vigorous way at this period, so that it was passing old Lycoming County itself, in the matter of population.<sup>2</sup> He had some business in the courts at Towanda, its capital, and he was admitted there early the following year.<sup>3</sup> Indeed, he seems to have been

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<sup>1</sup> Letter among the Lewis papers.

<sup>2</sup> The *Settler* was quoted in the *Democratic Press* of May 19, 1829, as saying that from the 6th to the 10th of the preceding month—April of this year 1829, "1,099 rafts and 236 arks, navigated by 3,083 men, and laden with produce valued at \$400,000 passed the town of Towanda."

<sup>3</sup> History of Bradford County, 1878, p. 182, based upon a prepared list in the Prothonotary's office, says he was admitted in 1828, but the Quarter Sessions Docket, No. 2, p. 193, states that he was admitted and sworn in as attorney and counsellor in the several courts on May 11, 1829. David Wilmot,

uncertain about not only his health, but uncertain where to settle during the whole year of 1828, when the Jackson campaign was at its high tide of enthusiasm. Dr. Webster Lewis tried hard to persuade him to settle in York County, but his brother, Eli, had gone to Baltimore and he felt drawn to the region where he won his first place in the world. While on his various visits to Wellsborough and Towanda he became much interested in the latter's growth, and especially in the newspaper plant, as he was also in one at Sunbury. The fact, however, that his wife and her sister, who was the wife of the editor at Towanda, were especially devoted to each other and that Ellis Lewis himself was greatly impressed with her husband, James P. Bull, led him to consider the situation in that place with special favor. Lewis' old antagonist, Simpson, had tried to start a paper in Towanda years before in vain, and about the close of the war of 1812, Generals Samuel McKean and Henry Willis and others of similar Jeffersonian interests founded the *Gazette*. This in 1818 was changed to the *Bradford Settler*, and was published with eminent success by Mr. Bull, who was an editor of considerable talent. He was a partner in other business, however, and tried to persuade his brother-in-law, Lewis, to join him, and the latter was inclined to consider it favorably and persuade Eli to come up from Baltimore and join them.

"This is, perhaps, the last letter you will receive from me, written at this place," he writes to the latter from Williamsport on March 14, 1829. "I believe I informed you in the last letter I wrote you of our intended removal to the Borough of Towanda, Bradford county," and after referring to Dr. Lewis' plans to keep him in York County, he explains that he removes "to Towanda to practice law, and, in order that Josephine may be near her sister, Mrs. Bull, who has also been a sister to me. I have also a great regard for Mr. Bull." He then presents his plan for Eli to buy out the *Settler*. Towanda was a strategic place to settle at this time for several reasons, for the General McKean interests constituted one of the wedges which "The Family" or

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of Wilmot Proviso fame, was admitted about five years later. September 8, 1834, and in a sense became Lewis' successor at the Towanda bar, if not in politics.

administration element had used to break up the old Bryanite wing of the Jeffersonian, now Jacksonian, party. For Jackson had swept Pennsylvania as well as the rest of the country<sup>1</sup> and "The Family," as the *Democratic Press* persisted in dubbing the administration element in the State, was stronger than ever; for Mr. Binns had made the mistake of his life in opposing the doughty victor of New Orleans, and thereafter lost his great influence in the party to which he had contributed so much to give a permanent name—the Democracy.

On the very day, March 4, 1829, when, after having been sworn in at the capitol, General, now President Jackson, mounted his white horse and was riding in democratic or western simplicity, or both, back to the White House, the gubernatorial convention of Jackson Democrats was at Harrisburg casting its first ballots for the next candidate. And the candidate that led all the rest, with twenty-five votes, was that of the *Bradford Settler*, General Samuel McKean, of Towanda, with Bernard, of Chester, a close second in a list numbering fifteen in all, and George Wolf, of Northampton, standing about midway with an even dozen followers. There was balloting all the next day without result, except to show that the Chester man had the most votes, but that there was an opposition which was destined to succeed on any one of three names. Mr. Binns' paper had some very shrewd comments on the situation, showing that "The *Eleven*," as he called "The Family" combination who had recommended Ingham for President Jackson's Secretary of the Treasury, were determined that McKean, Stevenson or Wolf should be the nominee.<sup>2</sup> On the morning of the 6th, the McKean supporters all went over to Wolf and the Stevenson men followed, giving seventy to the Northampton man and sixty-two for the candidate from Chester.<sup>3</sup> On the 10th, Binns

<sup>1</sup> For an idea of how Jackson captured the State see map illustrating it in Vol. I, of "The Life and Speeches of Thomas Williams, 1806-1871," by Burton Alva Konkle, 1905.

<sup>2</sup> Binns' *Democratic Press* of March 7, 1829.

<sup>3</sup> The MacKian, or McKean family—as it was spelled when it became Americanized—came from Scotland to Cecil County, Maryland, about 1740. Here General McKean's father was born and in 1791 settled in what is now Bradford County, Pa. The General's birth had occurred on April 7, 1787, in Huntingdon County, and at sixteen years of age he had been sent to live with his maternal uncle in Maryland—a Quaker of some learning, who took his education in hand. In due time he returned to what is now Bradford County and became successful in trade and in politics by opposing the Federalists.



GEORGE WOLF, GOVERNOR OF PENNSYLVANIA  
From an engraving in: Longacre's National Portrait Gallery



gently poked fun at the *Bradford Settler* and expressed mock anxiety as to whether the northern counties would do themselves violence in their chagrin. "We were somewhat disappointed in the Governor making business," wrote Ellis Lewis in his last letter from Williamsport on the 14th instant. "But not so much as the friends of Shulze and Bernard. It was gratifying that McK was the highest in vote on the first balloting & that his friends made the governor, by casting their weight in favor of Wolf, who is an intimate friend of McKean, an intelligent German lawyer of Northampton—for several years a member of the legislature of the State & Union, and a strong friend to the policy of Pennsylvania in relation to internal improvement."

Within ten days Lewis was in Towanda permanently and very busy with his practice and with an eye on the *Settler*. On the 24th, he writes Eli again, saying that Mr. Bull had offered him the paper plant for \$2,000; that it had, "in addition to a very good iron press," "the old Press which made such a noise in Baltimore when it belonged to *Hanson*—many years ago. Whichever side it has taken it appears to have been always *warm-hearted* in its politics. Mr. Bull has about 5,000 outstanding accounts—about 500 subscribers—with a plentiful assortment of materials." Neither he nor his brother bought the paper, however, for his practice increased so rapidly that two months later, on March 29th, he writes: "My business has kept me from home nearly constantly for the last six weeks. Am busily engaged preparing for the Supreme Court, to which place I start in about a week."

Just what period or what place the Towanda attorney was admitted to the Supreme Court is not known. It will be recalled that the old act of 1806, creating two districts with courts to be held at Philadelphia and Pittsburgh, had been modified more than once. Indeed, the very next year, 1807, the Susquehanna region had demanded a "middle district" with Sunbury, at the forks

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From the organization of the county in 1812 for twenty-five years he maintained his leadership there. He began service in the Legislature in 1815; then went to Congress in 1822; and in 1829 to the State Senate, a place he resigned in December following to become Governor Wolf's Secretary of the Commonwealth—the position in which these events find him. He was prominent in the militia, and in 1828 became Major-General. From a sketch by C. F. Heverly, Esq.



of that river, as the meeting place for fifteen of the central counties, and two years later, 1809, the Lancaster region demanded and secured a "Lancaster District" and the Chambersburg region the "Southern District," making five in all.<sup>1</sup> Naturally, he should have been going to the Sunbury session, so far as territory was concerned, but the session he refers to was that at Philadelphia, though the dockets of that time do not indicate that he had a case in his own name. The court was at this time composed of Chief Justice Gibson, a man of about forty-nine years, who had served on this bench already for more than a dozen years and had been president judge of the Towanda district during Lewis' days at the Harrisburg printing office; Justices Molton C. Rogers and Charles Huston, who had been appointed by Governor Shulze as the two new judges added to the court by the act of April 8, 1826, the one being a Princeton and Litchfield law-school man of forty-three years, son of a Delaware Governor and promoted to this post from the office of Secretary of the Commonwealth, while the other, Huston, nearly sixty, promoted from the bench of the Bellefonte district, was an old Williamsport land-lawyer, and once a student and instructor at Dickinson College; Justice John Tod, who had succeeded to Gibson's place after it was declined by Binney, a Connecticut Yankee of about fifty years, who had made a brilliant record as presiding officer of both houses of the Legislature and in two terms in Congress, and who had come from the same bench which gave Huston to the court; and finally the late Attorney-General, Frederick Smith, a friend of Governor Shulze, who had scarcely a year before appointed him to succeed the late Thomas Duncan. Thus it will be seen to have been practically a new court, with the towering figure of the even then distinguished Chief Justice as the only link with the past. Furthermore, it was practically from end to end a Shulze court, appointed for life—a fact which, in the political conditions of the time, no doubt had not a little to do with a dissatisfaction with the life-tenure of this court which had been growing ever since the revolution, and was destined to continue to grow in the

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<sup>1</sup> Purdon's Digest of the Laws of Pennsylvania, 1824, p. 414, et al.



future at an even more rapid rate. Whether Lewis personally appeared at this bar at this term or not, he was frequently before this bench thereafter, or at least all of them except Justices Tod and Smith, who both died the following year.

Whatever practice he may have had in the Supreme Court, however, he was having excellent success in his three home counties, Bradford, Tioga and Lycoming, during 1829. In the first, he made headway where Overton and Patton had the leading practices, and many important visiting attorneys, like Mallory and others, had a fair share. On October 15th, he writes his brother: "We are comfortably situated here—more so than I have ever been before. I have got into the first—I was going to say the best business, but that would be invidious—I am satisfied with the business I do here & besides have a good practice in Tioga. My old complaint in the ankle sometimes troubles me slightly, when excessively fatigued by professional exertion. But I have but little to complain [of]. \* \* \* \* \* Wolf has upwards of 800 majority in this county. Laporte & Parkhurst our old members are elected again & Gen. S. McKean has been elected to the Senate without opposition." This letter unconsciously expresses in very accurate proportions his two active interests, law and politics, and foreshadows a line into which, in all probability, even at this time he proposed to enter. And events and his own political sagacity conspired to make it possible. Mr. Wolf was elected Governor by a majority that was a foregone conclusion—the Federalists were too old and the Anti-Masons too young to have much of an influence against him. He stood for aggressive continuance of internal improvements and public education, and support of the public debt.

The year 1830 was full of the aggressive Jackson measures that had most important bearings on Pennsylvania. The President and his New York Secretary of State, Van Buren, were favorable to the Quaker State's idol, the tariff, and it was plain that he could have his support, when the time came for the brewing trouble in South Carolina to be met. There was another subject, however, far more complicated in some respects and

fraught with more immediate disaster, as many in Pennsylvania believed, which placed the President in opposition to the vested interests of the State. It would be interesting to know just when Philadelphia ceased to be the financial capital and metropolis of the United States, as she was during the period of the United States Banks, and just what part the rivalry of New York's commercial purposes, aided by Van Buren, had in bringing about Jackson's virulent attack on the Pennsylvania institutions; or whether the course of these institutions in supporting Governor Wolf's aggressive measures to carry to completion the great water-way transportation system of the State aided Van Buren and New York in strengthening the hands of Jackson, which were about to be upraised against them—and indeed were already preparing for it. It is certain, however, that whatever the ultimate causes were in this matter, the followers of Jackson in Pennsylvania were placed in a most perplexing situation, at least those were who were in sympathy with the vested interests of the State and knew how the welfare of the transportation system was bound up with them, for not all did know or believe it. It was plain, therefore, that if Van Buren was in line for the Vice-Presidency, as it became increasingly evident that Jackson was for a second term, Pennsylvania would have a difficult time steering between the Scylla of antagonising Jackson and the Charybdis of favoring Van Buren, and it will be interesting to see how she attempted to avoid both.

Meanwhile some of the changes that bore upon Ellis Lewis' relation to it may be noted. General McKean was at once appointed Secretary of the Commonwealth by Governor Wolf, and resigned from the Senate. Immediately Col. Bull, of the *Settler*, became a candidate for his place, but was defeated on a small margin by a fellow-follower of McKean, Wolf and Jackson.<sup>1</sup> It may be well to note also that the following month George M. Dallas was appointed United States Attorney for the Eastern District of Pennsylvania, in place of Charles J. Ingersoll, removed. It may also be well to note that on the 24th of May the editor of the *American Sentinel*

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<sup>1</sup> The *American Sentinel*, Philadelphia, for 23d January, 1830.

asserted, after six months of Wolf's administration: "Never since the days of McKean have the appointments of a Governor of Pennsylvania been so well received." He explains that this was remarkable, as, for about twenty offices in Philadelphia, city and county, there were more than one hundred and fifty applicants—so that a very small proportion entered "State House Row." And the Democrats of Bradford County, at a meeting on the 11th of May, "Resolved, that the wisdom, firmness and energy which have been displayed in the present administration of this State, have restored the financial credit of the Commonwealth, and is entitled to and receives our warmest support."<sup>1</sup> In December a new United States Senator to take the place of General Marks, of Pittsburgh, was in order, and for some days General McKean, of Bradford, and the Anti-Masonic Pittsburgher, Denny, led in a list which included such names as Dallas, Ingersoll, Stevenson, Buchanan, Wilkins, Coulter, Anthony and others, but it is probable that the strength of Anti-Masonry in the West and her sympathizer, Harmar Denny, led the Democrats to persuade General McKean to withdraw and unite on United States District Judge, William Wilkins, of Pittsburgh, as they did on December 16th (1830) on the twenty-first ballot.

Within a few months the United States Bank question, which had been kept under, began to come to the surface in Pennsylvania politics. On March 4, 1831, the *Sentinel* had a powerful defense of it: "The old bank of the United States was demolished by the casting vote of Vice President Clinton," the writer exclaims, and shows how it was so needed later that the father of George M. Dallas was called in and demanded its re-establishment. "Its location," he continues, "was secured to this State by the influence of our fellow citizen, Mr. Dallas, overcoming great efforts to fix it at Washington or New York." He warns against being "the dupes of the intrigues of an Albany cabal to cry down a bank fixed in Philadelphia, under a pretext of its dangers to public liberty, in order to set it up with ten-fold capacity for mischief at New York." How to be a friend of Jackson and a friend of the Bank and the vested interests

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<sup>1</sup> *Ibid.*, June 4, 1830.

of the State was evidently the problem, but the writer advocated standing for the latter in some way. While this was going on—for it went on for months—the Bradford County Democrats met at Towanda court house on May 10th, with Representative Laporte in the chair, Eliphalet Mason as one of the two vice-presidents, and Ellis Lewis as one of the two secretaries. They praised President Jackson, Governor Wolf, Samuel D. Ingham, then Jackson's Secretary of the Treasury, who was soon to show whether he would stand for the great Bank in Chestnut Street or not, and also General McKean. Their resolutions were an epitome of the attitude of the Pennsylvania Democracy.

Ingham was soon displaced because of his devotion to the financial interests of his State in defiance of Jackson. Forthwith, with the beginning of the summer of 1831, the contest against Van Buren for the Vice-Presidency opened with certain elements of New England siding with the movement in Pennsylvania; but certain elements in the latter State were doubtful about trusting it. "We object to the New England scheme of getting up a *convention* to meet at Baltimore to nominate a *Vice-President*," said the *American Sentinel* at Philadelphia on July 23d. "If these gentlemen are serious in the declaration, that they wish Pennsylvania to have the candidate, let Pennsylvania *name* her candidate *herself*. When the Pennsylvania Convention shall meet next winter to nominate electors to vote for Gen. Jackson, let that convention fix upon the Vice-President that Pennsylvania will be willing to support in conjunction with ANDREW JACKSON. \* \* \* We think with all due deference to New England democracy, that Pennsylvania can do that for *herself*." From various quarters the new Senator, Judge Wilkins, was mentioned as the probable candidate, and in the autumn and winter, so also was George M. Dallas put forward. How Mr. Binns must have more than once exclaimed: "The Family!" But, late in November, it was plain that the friends of General McKean did not intend that he should be lost sight of, for on November 4th, Ellis Lewis and a score of other locally prominent Democrats asked the General to be their guest at a dinner, an invitation which public duties

compelled him to decline, but the publication of both letters in the Philadelphia papers from the columns of the *Settler* answered the same purpose. On Tuesday, the 6th of December (1831), the House of Representatives elected Laporte, the Bradford County member, as Speaker also, and on the 13th the Bradford County Democracy met and elected Ellis Lewis a delegate to the Harrisburg convention of March 5, 1832, to nominate electors in favor of Jackson, a Vice-Presidential candidate favorable to Jackson, who should be a Pennsylvanian, and, as Jackson's and Wolf's administrations were endorsed, to nominate a candidate for Governor, who, while not mentioned, was likely to be Wolf himself.<sup>1</sup>

As March 4th fell on Sunday in 1832, this convention met on the following day at the court house in Harrisburg. On the first day Jackson was unanimously agreed upon after the presentation of his name by Ross Wilkins, but, although the names of William Wilkins, George M. Dallas, Martin Van Buren and James Buchanan were presented no decision was reached that day. The first occurrence on Tuesday morning was the presentation of resolutions by Ellis Lewis, who tried to bind the convention members to vote for and work for the nominee. An attempt was made by amendment to send delegates to the Baltimore convention, and in the discussion Mr. Lewis voiced the spirit of the convention when he expressed the following: "One argument advanced by the gentleman from —— is that we should adopt the plan proposed, because our political enemies made their nominations by means of National conventions. He was opposed," continues the report of it in the *Towanda Banner* soon after, "to taking examples from such a quarter. It has not been usual with the democracy of Pennsylvania to follow the example of our political

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<sup>1</sup> An interesting statement on this period appears in the *Democratic Review* of New York, April, 1847: "When, in 1832, an attempt was made to deprive General Jackson of the support of the Democratic Party in Pennsylvania for re-nomination, in pursuance of an extensive and selfish combination, extending over the State, to get anti-Jackson delegates elected, *without instruction*, to the State convention, to which the matter was committed, Ellis Lewis boldly, zealously and ably exposed the scheme at the primary meetings of the party in the northern counties, particularly in Bradford County, where he resided, and where the prime movement was made by its chief instigators; and its authors and abettors were completely prostrated before the night of public sentiment roused against them in the breasts of the democratic masses. His services, at this juncture of affairs, were too marked to escape general attention; and against his individual preferences and wishes, he was taken from his favorite pursuits and sent as a delegate to the State convention, which, it will be remembered, was thoroughly Jacksonian; \* \* \*"



enemies. An argument is attempted from our manner of nominating state officers by delegates from the several counties. A state does not stand upon the footing of a county or township. The votes of the minority in a county or township count for their full value, because they are parts of one consolidated whole. Not so with the minority of the state[—]their votes count for nothing because each state possesses the power of Government within itself. He was opposed to losing ourselves in a vortex of nationalism. The tendency to consolidation is already sufficiently great. If we lose our influence and distinctiveness as a SOVEREIGN STATE we may perhaps never get upon our legs again. We are told that the gentleman's favorite (Mr. Van Buren), if not nominated would divide and distract the party. Will it be said that Martin Van Buren, so ardently attached to, and so much distinguished by the present administration, has become lost to all sense of patriotism? New York has had three Vice - Presidents, and Pennsylvania none. Will then the patriotic state of New York refuse to coöperate with us?—Let us preserve the democratic party of Pennsylvania from the distractions which are now agitating other sections of the Union. If we go to the Baltimore Convention we may find nullifiers, anti-tariff men, opposers to the United States Bank, and everything else there. We may lose our candidate, and if we should, with the present excitement in favor of a Pennsylvania candidate, we know not how much we might endanger the success of the President. The propriety of our proceedings, our assumption of the power of sending delegates to Baltimore, contrary to established usages, will be enquired into by the people. Many of the party may not feel bound by the nominations so made. Division and defeat may ensue. Let us adhere to our nomination. It was the nomination of Pennsylvania which brought Andrew Jackson to the head of the Government. Let us then nail the good old flag of Pennsylvania to the mast. If the ship sinks, he for one," says the report of it, "was prepared to go down with her."<sup>1</sup>

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<sup>1</sup> This is in the *Towanda Banner* of January 4, 1834, and no doubt revived for current political purposes. It is plainly stated, however, that it was delivered at this convention, and an abstract of it appeared currently in other papers, notably the *Harrisburg Chronicle* of March 8, 1832.

The Baltimore project was lost by a vote of 84 to 48, but in the struggle it was assumed that the resolutions won, although they were not voted upon, as the next motion was a resumption of balloting, which stood 63 to 63 (with 4 for Buchanan and 2 for Van Buren) on the sixth ballot for Wilkins and Dallas. One Dallas man went for Wilkins on the next ballot, and so on until the tenth, when the Buchanan votes also went to Wilkins and he was declared the nominee for Vice-President, after which Wolf was unanimously re-nominated, as "it appeared." General McKean was made one of the Senatorial electors, and in the public address of the convention attention was drawn to the fact that New York had had three Vice-Presidents and Pennsylvania now rightfully demanded the courtesy of her sister Commonwealths. The choice of Wilkins rather than Dallas was a dramatic presentation of the internal perplexity of the Jackson Democrats at this time. To have chosen the son of the maker of the United States Bank would have suggested to the rank and file insincerity; to choose a favorite in the territory of Gubernatorial Candidate Ritner, who was now an avowed opponent of the Bank and a representative of Anti-Masonry, was shrewd politics, for apparently no apprehensions were felt on the score of the Clay and Sergeant ticket.

The campaign was fought with great vigor in so far as the election in October for Governor was concerned, and shrewd politics stayed the tide, as it was believed it would, for while Wolf had over 26,000 majority over Ritner in 1829, he was elected but with only about 3,000 majority. Meanwhile the campaign in the legislative district of Bradford and Tioga—a curious district arrangement by which the two counties sent two members—a phenomenon similar to the one before occurred, namely, that the two elements of the Democracy in Bradford County could not get together because of the vested interests' efforts to plot against Jackson, and the regular Democratic nomination was given to Eliphalet Mason, when Ellis Lewis was the logical candidate. Whether this was because McKean was not able to control or that he refused to



interfere is not now known. At any rate, Mr. Lewis and his friends proposed that he should stand as an Independent Democratic candidate for Representative. It was certain that the Tioga half of the ticket would be elected, even if it lost a large number of votes. The Bradford regulars seemed not to take into consideration that Lewis had a constituency in Tioga as well as Bradford County, and when the votes came to be counted the candidate of the Bradford regulars had but 1,006 votes to 2,077 for Mr. Lewis. In consequence when the Legislature should convene, the Bradford member would be one without the official stamp of either Governor Wolf or Secretary of the Commonwealth Samuel McKean, although there was no reason in the mind of Ellis Lewis why he should not support Jackson and Wolf with all his powers.<sup>1</sup>

As the Presidential election approached it became evident that as the country at large came to give increasing favor to the Jackson-Van Buren ticket rather than Jackson and Wilkins, the division in Pennsylvania became more and more bitter, until on September 15th, General McKean came out in a long letter stating that he and he believed all the electors would remain firm for Wilkins against Van Buren. "Pennsylvania," said he, "is fast losing her weight and influence in the Union, by substituting erroneously as I conceive—an implicit devotion to men, for patriotism. And what increases the humiliation of her position, is, that, this devotion is never concentrated on her *own men*. \* \* \* For my own part, I am heartily sick of this trait in the policy of Pennsylvania. In the various avocations of life, professional and otherwise, this state has produced

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<sup>1</sup> A little light is thrown on this campaign by a letter of David R. Porter's of November 8, 1842, to Ellis Lewis. Porter was then Governor. The subject was Ingham's career: "He was the Federal candidate for Speaker in opposition to Simon Snyder in 1806—was the most vituperative among the slanderers of that great and good man during the whole period of his admn. His first reception into the party was under the admn. of Governor Findlay, and during the short period of his connection with that admn. such seemed to be the perversity of his nature, that his every effort was bent on its prostration: in which he succeeded in less than eighteen months. At the convention of 4th March, 1823, an attempt was made by a clique of politicians to foist him on the party as its candidate for Govr, but it was met with such a burst of indignation as to frown it down in a most emphatic manner. He finally succeeded in getting into the cabinet of General Jackson, and before being well warmed in his seat, his house is found to be the rendezvous of every enemy the old chieftain had about the seat of government. You know the rest. He has always been regarded as one of the most malevolent \* \* \*, hence his bitterness towards you for frustrating his attempts to plant the standard of his rebellion against the admn. of Genl. Jackson in Bradford County." (Italics by the author.)

some of the most distinguished men of the age, and yet in a political point of view, many of her best men have been neglected or forgotten, amid the din of party feuds and domestic discussions."<sup>1</sup> On December 5th (1832), the electoral college of Pennsylvania met in the Senate Chamber at Harrisburg and cast their thirty votes for Andrew Jackson for President and William Wilkins, of Pennsylvania, for Vice-President. This was on Wednesday, on Thursday, twelve of the thirty—nearly half, as will be observed, issued an announcement in which they stated that, while casting for the talented son of Pennsylvania their vote as they were instructed, they were glad that enough of the good Democratic-Republican states had secured the election of such a friend of the administration as Mr. Van Buren. On Tuesday a Democratic convention, which had evidently been called to consider the possibility of swinging over the electoral vote to Van Buren, decided to only express confidence in him, although thirteen counties of the State gave about 8,000 majority for him. The bitterness below it all was seated in the financial and transportation phases of the question.

On Tuesday also the Legislature met, and the first public business to which Representative Lewis listened was the Keating resolution denouncing the course of South Carolina and her nullification proceedings and upholding the President in a vigorous course in regard to them. This came up again on the 11th, and after Mr. Buchanan, of Greene County, had spoken in favor of unanimously adopting the resolution, the Bradford representative made his maiden speech of the session. It was so highly approved that the Harrisburg *Chronicle* published it entire a little later [January 10th]: "Mr. Speaker," he began, "I concur with the gentleman from Greene that it is desirable to pass these resolutions unanimously if they are to be passed at all. My only doubt has been the propriety of legislative action at all upon resolutions of this character. They do not fall properly in the range of our legislative duties. The practice of giving legislative opinions in the manner now proposed, is not to be commended. It occasioned a waste

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<sup>1</sup> Reprinted from the *Susquehanna Register* in the Harrisburg *Chronicle* of November 12, 1832.

of time, and a useless expenditure of the people's money. It tended to withdraw the attention of the house from the proper subjects of legislation, and led to a neglect of those duties which were imposed upon us by the constitution, which the people had sent us here to perform, and which we had severally sworn at that desk to discharge 'with fidelity.'

"After the resolutions shall have gone through all the forms of legislative enactment in this house—after they shall have passed the Senate—after they shall have been approved of and signed by the Governor, what are they worth? They are perfectly inoperative as law—they cannot be enforced as such. They are nothing more than an expression of opinion of the legislature; an opinion which in general had better be left to the people themselves to express in their primary assemblies. What right have 133 members of the Legislature to express opinions for the whole people of this commonwealth, or to attempt to settle grave and solemn questions of national policy or constitutional law, for an enlightened community like ours? What right have the fifteen members from the city and county of Philadelphia to express opinions upon subjects not within the limits of legislative duties, for the 200,000 intelligent inhabitants of that portion of the state. They have no such right. My colleagues and myself claim no such right in behalf of the 30,000 inhabitants we have the honor to represent upon this floor. They are abundantly capable of discussing and expressing opinions for themselves. They sent us here for no such purpose. They sent us here to make their laws, and to transact such business as fall within the powers vested in us by the constitution. The people have loudly complained—and they had good cause to complain—on account of the time consumed and money expended in discussing the celebrated French resolutions.

"I repeat the inquiry, Mr. Speaker, what are such resolutions, in general, worth when passed? I know they are paraded before our sisters of this great confederacy, as the '*voice of Pennsylvania*.' But is there not danger and delusion in this course? Can resolutions thus adopted be relied upon as expressing the voice of

the people of Pennsylvania? Resolutions upon questions of national policy, have heretofore been presented to this house. The subject is not within the range of our official duties—our attention is engrossed with the proper business entrusted to us by our constituents. We feel averse to consuming time in the discussion and investigation of subjects with which we have properly nothing to do; and thus a desire to dispose of them as expeditiously as possible; a knowledge that they are harmless, and a courtesy to the gentleman who presents them, often produces the adoption of resolutions in the legislature, which could never receive the deliberate sanction of the people. At the last session resolutions were adopted in favor of the tariff, and also resolutions in favor of rechartering the Bank of the United States. The first was proclaimed as the voice of Pennsylvania, although the people of the Commonwealth had taken no part whatever in this unauthorized expression of what was called their sentiments. The last—those relative to the bank—had since come under the consideration of the people, and had been condemned by their deliberate judgment at the polls.

“These resolutions may be viewed by some as an entering wedge to another string of resolutions upon the tariff and upon the United States Bank. But I shall not so consider them. Those before the house stand upon a different footing altogether. They have peculiar claims to the attention of the house: Pennsylvania, excited by a feeling of State pride, and believing that her rights of sovereignty had been trampled upon by the Federal government had herself in times past raised her standard and her arms against the constituted authorities of the Union. Her legislative and executive authorities had authorized open resistance to a process issued by a federal court in pursuance of a mandate from the Supreme Court of the United States. Her militia had been ordered out, and the United States Marshal had been driven at the point of the bayonet from the execution of his official duties in the Olmsted case. For more than thirty years had Pennsylvania been the champion of these doctrines. Her example and the arguments of her public men during the progress of these proceedings,

had been cited and repeated by the advocates of nullification in the South. The course of Pennsylvania may have had an unhappy influence on South Carolina. That deluded commonwealth has directed her proceedings to be forwarded to us. It therefore becomes necessary for us to speak on this occasion. The importance of the crisis and the peculiar circumstances of the case, justify a departure from the general principles which ought to be adopted. We have held out false lights—it is our solemn duty to extinguish them, lest we may incur the guilt of leading a gallant and patriotic sister of the confederacy to misery and ruin. Let us, then, adopt that resolution quickly and with unanimity. Justice to ourselves, to South Carolina, and to the Union itself, requires a solemn disclaimer of the erroneous doctrines contended for in the case of the Sloop Active. Let us tell South Carolina, as they told us on that occasion, that she is in error—that she had better return to her duty as a member of the Union—that she has no right to oppose the execution of the laws of the Nation and that her monstrous edict of nullification is *crimsoned with the hues of treason*.

“The gentleman from Beaver (Mr. Lacock) took an active part as a member of the legislature in the proceedings of Pennsylvania to which I refer. I am happy to hear him advocate the resolutions now before the House. I understood him to admit that the ground assumed by Pennsylvania was untenable—that the opinion of her sister States on that occasion settled the question, and that he himself, in supporting these resolutions, recedes from the ground taken by him on the occasion alluded to. If I misunderstood the experienced and talented gentleman from Beaver I hope he will set me right.

“But how are we to understand the gentleman from the city (Mr. Keating)? Owing to his distance from me I heard but a few of his remarks. I have before me, however, a newspaper sketch of the debate by which it appears that he urges Pennsylvania to speak out on the occasion, because *‘she has always been on the side of correct principles.’* If this were so there would be less occasion for an expression of opinion now. We might point to our unwavering adherence to correct constitu-



tional principles as a sufficient answer to the proceedings in South Carolina.

"But what does the gentleman mean by the allegation that Pennsylvania had always been on the side of correct principles [?]. It may be flattering to our pride to say so, but is the saying true? Are the principles adhered to so pertinaciously for more than thirty years, in the *Olmsted* case, correct? Can the proceedings on that occasion be favorably distinguished, in principle, from those of South Carolina now? If the position of Pennsylvania, in times past, can be shown to be consistent with the ground she is asked to assume in the adoption of these resolutions, I would be exceedingly indebted to the gentleman from the city for the exposition. It would very much diminish the pain which an inexperienced member must feel on being obliged to condemn principles which had been advocated by our ablest men—adhered to for more than thirty years by our constituted authorities—sanctioned by men, some of whom are members of our present legislative body. Others, candidates for office before us, and many more after occupying exalted stations of public trust, had descended to their graves esteemed for their virtues—venerated for their patriotism.

"Understanding these resolutions as I presume the gentleman who offered them desires to be understood—understanding them as not interfering with the sacred right of revolution, I vote for them with my whole heart. But if the day shall unhappily arrive when the authorities of the federal government shall transcend their constitutional limits—trample upon the liberty of speech or the press—abolish trial by jury—abridge the rights of conscience, or shall in any respects attempt to break down the bulwarks of our liberties, I would consider such an usurpation as more ruinous than civil war. I would in that case prefer the hazards of rebellion and revolution to longer submission. I would rely upon the spirit of '76. I would call upon the sovereignty of the State to protect her citizens in the enjoyment of those inestimable blessings which their ancestors had bled to acquire.

"But this is not the case of South Carolina. The power to enact tariff Laws is expressly granted by the



constitution, the power is so clearly given that no one in this house can for a moment doubt. Every effort has been made to conciliate and to do her justice in modifying those laws. But all in vain. Goaded on by the mad ambition of aspiring spirits, she is on the brink of ruin. We have but one duty to perform. It is a sad and solemn one.—Let us give our voice with unanimity—let us give it with sincerity—and when our worthy President shall call for action LET US SUSTAIN HIM WITH OUR TREASURE AND OUR BLOOD.”<sup>1</sup>

The address made a profound impression and the resolution was passed by a vote of 94 to 3. It marked Representative Lewis, of Bradford County, as a man of power who must be reckoned with. It also commanded an increased respect for him as a man of legal ability and judicial temperament, as well as added to his reputation as a leader who could be followed with confidence.<sup>2</sup> The result was that when, on the 14th of December, the House committees were announced, the name of Mr. Lewis was upon two of the most important ones, that on the Judiciary and that on Inland Navigation and Internal Improvement. It may be noted that Governor Wolf, in his message, had vigorously expressed the purpose of Pennsylvania to stand for the rechartering of the United States Bank, canal improvements, providing for the state credit, general education, and a reform of the judiciary and penitentiary system. And when the independent member from Bradford County entered the

<sup>1</sup> A little later, January 17 (1833), there was an attempt to adopt a resolution on the tariff, which was carried, but not without a strong protest by Bradford-Tioga members and two others, which was spread on the minutes. Lewis argued against it, as he had indicated that he would in the South Carolina discussion. The distinguished Philadelphian, Robert Vaux, on January 12th, wrote Mr. Lewis a letter of thanks and endorsement of this speech: “Our Legislators” said he, “are too apt to interfere with matters entirely beyond the sphere of their duty, and very often without even consulting their constituents on the grave topics about which they venture to speak in their behalf. Much mischief has followed from this practice, and in no instances more strikingly so, than relative to the Tariff, and the Bank of the U. S. The exposition of the true doctrine of the line of action for the State government, will, I trust, make a deep impression upon the members of the legislature, and the people of Pennsylvania, and have the happy effect to prevent in future all tampering with subjects constitutionally entrusted to other heads, and hands.” Published in *Northern Banner*, Towanda, Nov. 9, 1833.

<sup>2</sup> An incident occurred on February 14, 1833, which shows Lewis in a characteristic light. Some years before, a deaf and dumb boy was put in the Pennsylvania Institution for the Deaf and Dumb and educated by the State. He developed talent and at this session presented the State some of his lithographic work. Mr. Lewis was made chairman of the committee to respond to the young man's overtures and thank him and wish him success. The boy's name was Albert Newsam and it was voted that these drawings should hang in the Senate, the House and the State Library.

Legislature this body, as well as the Governor and the public, soon saw that he stood solidly in support of these purposes of Governor Wolf.<sup>1</sup>

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<sup>1</sup> Another characteristic story is told of Lewis about this time. Thaddeus Stevens, who became a member of the Legislature at this time, was a wealthy bachelor, and on one occasion when he and Lewis, who often lectured on the subject of education, were co-operating in behalf of a public school system, Stevens made a notable speech on that subject before the Legislature. About the same time, Mr. Lewis, who was himself a minor poet of some ability, saw a good poem on education by Lydia Jane Pierson, whose little volume called "Forest Leaves" had just been issued. Lewis had heard that a series of misfortunes had brought the lady to such pecuniary straits that they had lost their home. He told Stevens about it and intimated that here was a chance to aid the deserving. Stevens agreed and asked Lewis to purchase the family a suitable small farm and send the bill to him—a program that Lewis carried out to the profound gratitude of the authoress of "Forest Leaves"—who knew neither of the gentlemen except by reputation. Lancaster *Intelligencer*.

## CHAPTER VII

### GOVERNOR WOLF MAKES HIM ATTORNEY-GENERAL

1833

Ellis Lewis was acting in the midst of such powerful political forces when he entered the Legislature that his career in that body was bound to be eventful, but probably no one supposed it would assume such proportions as it actually did. The chief feature of the session was the election of a United States Senator, and General McKean was the leading candidate, with Richard Rush, the Anti-Masonic element's favorite, as a close second, while the Clay Republicans and the Van Buren-ites, respectively, stood for John Sergeant and Henry A. Muhlenberg. At the last vote in December, which resulted in no choice, McKean received 50 votes, Rush, 45, and 18 went to Sergeant, with 15 to Muhlenberg. Two days before this, on December 12th, a resolution of inquiry into the mode of counting the votes for Governor at the late election, was proposed. Its form was a serious reflection on the executive department, and Representative Lewis promptly attacked it with great vigor and precipitated a spirited discussion. At its close he presented a substitute amendment which would make it merely a general inquiry by the Judiciary Committee as to counting methods, and it passed 53 to 43.<sup>1</sup> Governor Wolf was at a window near enough the hall to hear Mr. Lewis' speech and was so impressed with its power, loyalty and wisdom, that he at once sent for him and thereupon enrolled the Bradford representative as a leading adviser and supporter.<sup>2</sup> This meant that the favor of the King had fallen on the young statesman and that official promotion was certain to follow, though it is doubtful if our Bradford representative had any conception as to the form it should take.

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<sup>1</sup> Harrisburg *Chronicle*, filed in the State Library at Harrisburg.

<sup>2</sup> Hon. C. D. Eldred, in "*The Now and Then*," 1890, Vol. III, No. 3, p. 54.

It is not at all improbable, either, that the Secretary of the Commonwealth, General McKean, would have been glad to see this rising vigorous and independent personality in his bailiwick not only friendly in his deadlocked Senatorial campaign in the Legislature, but passed into safe fields, as he had been entirely too powerful in Bradford and Tioga, and was able to do without the prestige of both Secretary and Governor. Within six weeks, during which period Representative Lewis was one of the most powerful leaders on the floor of the House, it was noised about that he was to be made a high officer, and on the last day of January, 1833, the Governor announced Ellis Lewis as his Attorney-General.<sup>1</sup> The *Chronicle* also stated that the appointment was a judicious one and that the new Attorney-General expected to make his home in Harrisburg, "and it is proper in every respect that the Attorney-General should reside at the seat of Government." The Attorney-General was not destined so to do, however, although it would have been a great pleasure, no doubt, to have returned, as such a distinguished resident, to the vicinity of the old printing-office from which he had escaped less than a score of years before, at this very season.

Attorney-General Lewis did not give up his seat in the House as Bradford's representative, although it did not take long for it to become a mooted question. On March 9th (1833), the *Northern Banner*, the new name of the old *Settler*, had a defense of this course, the argument being that the Constitution expressly excepted the public office of Attorney-at-Law from the prohibited offices to a member of the Legislature, and the Attorney-General was merely an Attorney-at-Law acting for the State. As those who elected him to the one post and the one who appointed him to the other, as well as he himself, were satisfied, no one seemed to take serious stand against it, and the *Banner's* theory apparently prevailed.<sup>2</sup> His new post, as the Governor's legal adviser, increased his influence as a member of the Legislature tremendously, but the strength of his addresses and

<sup>1</sup> His commission, among the Lewis Papers, is dated 29th January, and he took the oath of office on February 2, 1833.

<sup>2</sup> The *Northern Banner*, beginning March 9, 1833, a volume in possession of Editor C. H. Heverly, of Towanda, Pa.

measures equalled if they did not surpass that influence. On February 8th (1833), a resolution of a Philadelphia member came up in regard to the action of Congress in disposing of public lands, and the Attorney-General member presented an amendment that looked to preserving the rights of States. "Mr. Lewis considered the bill at present before Congress unconstitutional," said a report in the *Chronicle*. "He so considered it in more than one light; if the general government had a right to dispose of this land, he was unacquainted with the manner in which they acquired the right. The right, he had not a doubt in his mind, vested with the several states, after the wants of the general government were satisfied. The manner in which the resolution was worded, he considered rather demeaning to this state. His state pride could not brook it, and if we gave away the reserved privilege of a state in this case, it might give rise to a precedent, which would prove detrimental to the states at some time or other. The general government it was contended had no right to prescribe a general system of education, of Internal Improvement or African colonization. If they have no power on these subjects, did it not at once prove they had no constitutional right, on the one mentioned in the resolution? If all these rights were to be assumed by the General Government, then it was time for the States to look about them, or their privileges would be swallowed in the grasp of that of the United States. Mr. L. quoted the provisions of the constitution of the United States in support of these positions, and concluded them by quoting the 10th Art. which reserves *all* powers *not* delegated to the General Government, to the several states. This government was rather an external than an internal one. The general government had therefore no right to interfere and offer us money, which was now more absolutely ours than theirs. Mr. L. knew it was the favorite *project* of Henry Clay—it was his in opposition to the recommendation of our present venerable chief magistrate. Mr. Clay, he had no doubt, was fully aware of the advantage that would arise to him, if he could get consent of the legislature of Pennsylvania in favor of his project. \* \* \* \* the project



was still the favorite one of the 'Orator of the West,' in opposition to that of the 'Hero of the West,' and he was opposed to it, because the right of distribution rested with the states under the general government, and not originally with the latter."<sup>1</sup> The result was that the whole matter was referred to a select committee of which Lewis was one and the proposer of the resolution, Mr. Thompson, of Philadelphia, another, of five members.

The Attorney-General member of the Committee on Internal Navigation was in the midst of the struggles over internal transportation. One of his amendments brought out some excellent explanation of the status of the transportation struggle, by Almon H. Read, of Susquehanna: "Sir," said he, the report reads, "what was the original design? It was a *continuous, uninterrupted water communication* between the Delaware and the Inland seas of the North West." He urged that three distinct routes were in the minds of the canal convention of 1825 and the legislators of that day: the Juniata route, the West Branch of the Susquehanna route, and the North Branch route. The first two had not proved a success and he advocated pressing the Wyoming or North Branch lines, as the main line, which would capture half of the agricultural trade of New York State as well, a trade which equalled that of the whole Ohio river trade. He expected the rail-and-canal route to Pittsburgh to be finished, for the trade of the Ohio river was secondary only to the trade of the lakes. It should be treated as secondary too.<sup>2</sup>

On March 1st (1833) Mr. Lewis read a report of the Judiciary Committee on complaints against a Justice of the Peace in Philadelphia which illustrates one element of his strength. After reciting the complaints and the testimony before the committee he adds: "The committee can perceive no propriety in sanctioning a principle which will close one of the doors of removal, which has been in their opinion, wisely left open by the framers of the constitution. That instrument provides

<sup>1</sup> Harrisburg Chronicle, February 11, 1833, at the State Library, Harrisburg.

<sup>2</sup> Harrisburg Chronicle, February 14, 1833. This combined report of two sections on one speech is one of the most luminous commentaries on the status of the transportation struggle in Pennsylvania that can be found.



that Justices may be removed, either by conviction of misbehavior in office, or of any infamous crime, or on the address of both Houses of the Legislature. Both modes of proceeding are open, the first is confined to cases of misbehavior in office, and of any infamous crime, or on the address of both houses of the Legislature. If a magistrate has been tried and acquitted on a charge of a crime, or misdemeanor in office, it is still in the power of the Legislature to look beyond the record of acquittal and if they believe him guilty, a false verdict in his favor or one obtained by mistake, cannot save his office, altho' it may be conclusive so far as to save his person from punishment. On the other hand it is not necessary that the Legislature should believe the officer guilty of either one offence or the other, to justify removal. It is enough that in their opinion the interests of the community require a change. \* \* \* \* \*

discontent among the people, it is ample cause of removal.—In a government founded upon public opinion, an officer can have no right to retain his station, after he shall have ceased to give public satisfaction. Retaining such individuals in public station, after their conduct has excited great and general dissatisfaction, tends, more than anything else, to bring into disrepute the administration of Justice, to destroy public confidence in our happy form of government, and to endanger the permanency of our free institutions. It is to the difficulties heretofore experienced by the people, in their endeavors to remove from office those who have ceased to give public satisfaction, that the committee ascribe, in great measure, the numerous applications for an amendment of the constitution.”<sup>1</sup> The committee recommended removal by address and it was passed by a vote of 91 to 2.

An incident or two bearing upon his old printer days and which occurred about this time, may throw light upon his character and popularity. One happened on the occasion of the annual “Printers’ Celebration” at Harrisburg on Washington’s Birthday. Their Attorney-General brother was of course invited, and as illness prevented his attendance he sent a letter, containing, among

<sup>1</sup> The *Northern Banner*, Towanda, March 30, 1833, file in possession of Editor C. F. Heverly, of the *Bradford Star* of Towanda.

other things, a toast in the technical terms of a printing office: "Our Country: A *form of twenty-fours, imposed in the furniture* of mutual concession—*locked up in the chase* of perpetual union. A *sheep's-foot* and a black ball to those who, for the sake of being *capitals* in one *page* would throw the whole *form* into *pi*"—all of which, while especially pertinent to South Carolina, could be applied elsewhere at pleasure. Thereupon there was a toast by the whole company to "Ellis, Lewis, Esq.—His acknowledged merits and legal attainments have deservedly placed him at the head of his profession."<sup>1</sup> Another incident recalling his printer days in Harrisburg, occurred a few days later, namely, on March 7th, when he announced his appointment as Deputy Attorney-General for Cumberland County the son of his old "master," John Wyeth, Jr." He afterward told an old friend, Judge C. D. Eldred, that he did this to show that he nursed no resentment toward the family. He at the same time appointed T. B. Dallas for Pittsburgh, and indeed all his other appointments were both good law and good politics, so that the leaders in the Senatorial dead-lock, who knew well that dead-locks were liable to generate "dark-horses," might naturally look with apprehension on this new figure looming up under the tutelage of Governor Wolf within the very limits of the battle-field itself.

An innocent looking incident came up in the Senate on March 12th (1833), that proved to be very significant. Some petitions had come up from Lycoming County complaining that their venerable President Judge, Seth Chapman, had so far passed beyond the age of usefulness that his occupation of that office in the Eighth Judicial District was an obstacle to the ends of justice. The Senate had referred the matter to a committee for investigation and were now ready to report. They stated that in the course of the examination of witnesses they had come to the conclusion that the complaints were well founded, but at this juncture a letter from Judge

<sup>1</sup> Harrisburg Chronicle, February 28, 1833.

<sup>2</sup> Harrisburg Chronicle, date indicated. In the *Democratic Review* of New York, April, 1847, p. 358, it states on good authority: "As Attorney-General, Mr. Lewis would never take any fees for public prosecutions, leaving these to his deputies in every instance, considering this course as most in accordance with the dignity of the office."

Chapman was received, dated March 11th, stating that he had had the matter of resignation under consideration for some time, and that only provision for his family had delayed his decision. His resignation was now in the hands of Governor Wolf to take effect on the following October 10th. This, the committee said, made further investigation or action unnecessary and hence their report at this date. The President Judgeship of the old Eighth District was therefore to be vacant in October—a district in which Ellis Lewis first won a place in public and private life as printer, lawyer, and publicist; where he had won his wife and built his first home; where he had greater prestige than anywhere else in the world; where he was admitted to the bar, had built up his practice and had been prosecuting officer of the State. It was also a district torn by the discussions created by the last campaign by the partisans of Jackson and Wolf and Wilkins and friends of Van Buren and their present candidate for Senator, Henry A. Muhlenberg, and one in which the Attorney-General had steered an independent course—although, as he proved, a loyal supporter of Jackson in national matters and Wolf in State affairs, and consequently did not have the local stamp of the McKean interests. He was however, now voting for Secretary McKean for the United States Senatorship in the long continued deadlock in the Legislature.

It is significant, also, that there was before the Senate at this time a bill for a constitutional convention to provide for a Lieutenant-Governor, a check by the Senate on all appointments by the Governor, the election of most county and city officers, a fixed limit to judicial terms instead of life tenure under appointment of the Governor as it was, a reduction in the Senatorial term, and a few other provisions. This was the third effort to revise the constitution, that in 1805 having failed and that in 1825 having been voted down by the people. This time, however, the people were thoroughly convinced that the present centralization of patronage in gubernatorial hands was the fruitful source of abuse and vicious organization of state politics. The result was that members of all parties recommended it to the next

legislature, and early in April the session closed and they had failed to elect a Senator.

During March also a committee, of which Mr. Lewis was a member, made a report notable in the history of the State. There had been a terrible mortality in the old Arch Street Prison, in Philadelphia, during the previous summer, which led to the investigating committee referred to, and after examination they made a report on March 15, 1833. Pennsylvania, like many other States at that time, imprisoned for debts, and in the debtors' section of this prison, they found that in forty cases the total debt on which the victims were incarcerated was but \$23.40, some individuals having been imprisoned for as low as two cents, and some for nineteen cents, twenty-five cents or thirty-seven cents! The report reads much like Mr. Lewis' work, and it intimates that all imprisonment for debt should be abolished, but the committee brought in a law which provided that for all debts under \$5.34 it must be abolished and the law was passed.<sup>1</sup> At the same session he originated and secured the passage of a companion law which allowed insolvent debtors to give bail before a prothonotary. These two provisions, following in the wake of absolute abolition in New York and some few other States, were hailed as a most humane act and paved the way for total abolition of imprisonment for debt a decade later. This event gave to Attorney-General Lewis' name a popular affection that was not to be forgotten in coming years.

On July 13th (1833) a banquet was held in Towanda and the Attorney-General was present and responded to the first toast of the evening, President Jackson. Forthwith Attorney-General Lewis was the subject of a toast response by Editor Rice, of the *Northern Banner*, with: "His talents and services are known to the people of Bradford County and will not be lost sight of at the next election." About two months before this, namely, on May 21st, some dozen or more gentlemen headed by Mr. Lewis invited President Jackson to visit Harrisburg

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<sup>1</sup> House Journal, 1832, Vol. II, p. 633. Also Pamphlet Laws for 1832-3. The *Democratic Review* of New York, April, 1847, p. 357. The *Pennsylvanian*, August 30, 1851. Also official sketch of Democratic State Candidates in 1857.

on his Northern tour, and exactly a month previous to this very day at Towanda, he had announced his intention of so doing.<sup>1</sup> On July 27th, the opposition of the McKean following in Bradford County began to develop itself locally, the chief argument against him being the old one of his holding a membership in the House while Attorney-General. On the 10th of September, however, a county convention was held at Towanda and a letter from the Attorney-General was read, expressing thanks for the confidence expressed by his former election and declining renomination. They at once passed the following: "Resolved, that Ellis Lewis is entitled to the thanks of the People of Bradford County for his efficient services during his short but eventful career as a representative, and that we have the highest confidence in his talents and integrity as a lawyer and a citizen."<sup>2</sup> It was eight days after this event that the thunder-clap of the President's orders for the removal of deposits from the United States Bank fell upon the ears of the political and financial world and stirred Pennsylvania to the depths.

Before taking up these and other events which were operating to draw him to other fields, a glance may be taken at his proper work as Attorney-General. It can scarcely be more than a glance, for, unlike the custom of that office, in recent years, of issuing a volume of substantial proportions containing all the formal opinions rendered by the incumbent of it, the office did not then nor, indeed, for many years thereafter keep any records of its work. Such opinions of Attorney-General Lewis as have been preserved to our period therefore appear only in the files of those local newspapers which found them of interest to their constituency. The result is that few papers were large enough to deal in this kind of news, and but two of these opinions are known to be preserved. These were both on canal subjects and both delivered in August, the one on August 5th, to the Auditor-General and the other on the 24th of the same month to the Canal Superintendent, General Wm. B. Mitchell. The first one, that to the Auditor-General, concerns the purposes of a dam on the Bald

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<sup>1</sup> *Harrisburg Chronicle*.

<sup>2</sup> *The Northern Banner*, of Towanda, September 14, 1833.



Eagle Creek of the West Branch of the Susquehanna. After reciting the technical relations of the dam to the law and to the specific authority of the Canal Commissioners, he says: "If the dam was directed to be constructed for the mere purpose of forming the proposed connection, and the Commissioners, the better to disguise their object and evade the proviso in the law limiting the length of the dam, have merely changed its name, giving it the empty cognomen of a 'feeder dam' when in truth it is a connexion dam, the whole proceedings would without doubt be a criminal violation of the law. The illegality, if it exist at all, consists more in the motives than in the acts of the Commissioners. If they have violated the law, in the premises, the violation consists in the application of a power given to them for one purpose to the accomplishment of another object for which they have no authority so extensive. It is like the alledged unconstitutionality of the tariff laws.

"The opponents of the protective system admit that Congress may lay duties for revenue, but they deny the power of that body to lay duties for the purpose of protecting domestic Industry. Congress pass[ed] an Act appearing on its face to be for the purpose of revenue, but arranged in all its details, in such a manner as to accomplish the supposed unauthorized object of protection. Admitting their authority to be thus limited, the violations would consist in the concealed motives of the members—in the improper application of a lawful power to an object over which they have no such power. In cases of this kind, when the violation depends upon the secret purposes of the persons exercising the authority, it is not competent for the courts to pronounce the act void for want of authority. Nor is it competent for the Auditor General to reject the vouchers offered by the Superintendent, in the present case, for want of proper motives in the Commissioners who have directed the expenditure, because there is no want of authority here. They have kept within the limits of their powers.

"If there is anything wrong it is in the abuse of an authority unquestionably confided to them, and not in any attempt to exercise a power not confided. Whenever



any officer, authorized to disburse the money of the State, transcends his authority, the public must look to the Auditor General to guard their finances, and arrest the expenditure. But where the law has entrusted a discretionary authority, over a particular subject, to a certain body of men, so long as they keep within the limits of the power confided, the Auditor General can administer no relief against its improper exercise. It is not his duty to arraign their motives and to treat their acts as void, on the ground of a supposed abuse of a reposed authority. Drawing their authority from the same source with the Auditor General, they must answer for all abuses to the common superior—the representatives of the people. If the Canal Commissioners have changed the location of the feeder dam for the purpose of exceeding the law relative to the Bald Eagle Connexion, I know of no remedy in the Accountant Department. If an officer execute a writ, issued in pursuance of a judgment appearing on the record to be within the jurisdiction of the tribunal rendering the judgment, it is justification to him, notwithstanding the court may have abused its authority, or may be have had in view the accomplishment of improper rather than proper but unauthorized objects. So if the superintendent have disbursed the public money, in pursuance of directions from the superior agents of the Commonwealth, and those directions appear, upon their face, to be within the scope of the authority confided to his superiors, it is a justification to the former, notwithstanding the latter may have had an unauthorized object in view in giving the directions. It is only where the authority of the superior is transcended that the inferior is justified in refusing obedience, not when it is misapplied or abused.

“To avoid all delay I have thrown these views hastily together in language loose and imperfect. I have full confidence however in the construction attempted to be enforced. Although a separate answer to each point is not given in the order in which they were presented, still an answer to each will be found in some portion of what I have said. In order that I might be better understood I may have gone further than required. If

so, I rely upon your kind indulgence, for the unintentional trespass upon your attention.

"Very respectfully yours, &c.,

"ELLIS LEWIS."<sup>1</sup>

The second opinion, that of August 24th following, was based upon a case referred to the Governor by Superintendent Mitchell, involving the course of a local magistrate who assumed jurisdiction in an action affecting construction of some part of the canal. This is sufficiently brief and interesting to give entire, as follows:

"Your letter of the 22nd instant, to his Excellency, the Governor, having been referred to me, I respectfully advise the following course of proceeding, to remedy the grievances of which you complain.

"It is my opinion, that a Justice of the Peace has no jurisdiction of a claim for damages, occasioned in the construction or obtaining materials for the construction of the Railroad or Canal; and that in all such suits, no matter who may be the nominal defendants, the Commonwealth is substantially the party sued. No court in the State can entertain directly or indirectly, a suit against the Commonwealth, unless such suit has been previously authorized 'by law.' Before the jurisdiction can attach, her consent must be shown to the 'manner,' the 'Court' and the 'Case.'—Const. Pa. Art. 9, S. 11. The case referred to, instead of being subject to the jurisdiction claiming cognizance, and to the matter of proceeding adopted, have [has] been expressly submitted to a different tribunal, proceeding in a different manner—5th section, act of 9th April, 1830, pamphlet laws, page 220. The Justices of the Peace have no jurisdiction either over the subject matter of the action or the party defendant. Entertaining this opinion, I think on a Certiorari, the Court of Common Pleas will hear affidavits to prove the facts necessary to show excess of Jurisdiction, if they should not appear upon record, although in ordinary cases, where the jurisdiction is not disputed, the parties are generally confined to the record returned by the justice, vide 3 Yeates

<sup>1</sup> Harrisburg Chronicle, August 19, 1833.

479, Ahlmead's [Ashmead's] Rep. 52, ib. 217, 222, Wharton's Dig. 474-5, Bin. 29, Dal. 77, 114. I therefore recommend that writs of Certiorari be taken out, and good counsel be employed to attend to the proceedings.

"It may be necessary to guard against a recurrence of the evils alleged. If the facts are as stated in your letter, the conduct of the magistrates entertaining jurisdiction is exceedingly injurious to the public interest, and evinces but little regard for the policy and as little respect for the sovereignty of the State. It is immaterial whether their conduct proceeds from hostility to a measure of public policy which the Legislature have adopted, or from an honest error in opinion. In either case the public interest seem[s] to require the removal of those whose opinions are so greatly and dangerously at variance with the laws and established policy of the Commonwealth. An erroneous opinion in an ordinary case would be no cause of removal, but where the error effects extensively the whole community, thwarts the wishes of the people in their system of internal improvement and tends to obstruct the public agents in their endeavors to carry those wishes into execution, it is ample cause for removal by address. It will be proper for you, therefore, to make a detailed report of the facts in each case, either to the Governor or the Canal Commissioners, that the whole subject may be laid officially before the representatives of the people.

"Very respectfully yours, &c.,

"ELLIS LEWIS."<sup>1</sup>

Returning to the flow of political movements, it may be said that those in the matter of the Eighth Judicial District president judgeship were publicly made on the 31st of July (1833). "General McKean," writes Hon. C. D. Eldred in *Now and Then*, in November, 1890, in relation to Lewis at this time, "wished to retire him from active politics, as Lewis' ambition and talents threatened to interfere with his own aspirations. General Anthony was in Congress and expected re-election, and would support the Attorney-General's pretensions. James P. Bull, editor of the *Bradford Settler*, and a

<sup>1</sup> This appeared in the *Northern Banner*, at Towanda, on September 21, 1833. It also appeared in the *Harrisburg Chronicle* and some few others.

brother-in-law, was a political power in Northern Pennsylvania at this time, and of course was Lewis' friend, whilst W. F. Packer, then Superintendent of the West Branch Division of the Pennsylvania Canal, and proprietor of the *Lycoming Gazette*, was indebted alike to McKean and Lewis for his preferment, and awaited an opportunity to cancel the obligation. Ellis Lewis was therefore formally announced and pressed for the appointment "—to succeed Judge Chapman—" by the *Lycoming Gazette* as early as July 31, 1833. But the friends of Van Buren and Henry A. Muhlenberg, with the *Lycoming Chronicle* faction, at once stoutly and firmly opposed his selection. An able correspondent of the *Chronicle*, who styled himself a 'Free Citizen, understood to be Dr. W. R. Power, scored the personal and political character of the Attorney-General through the columns of the *Chronicle* weekly for the ensuing three months, whilst the *Gazette* as earnestly defended both, and the war of words continued.

In the meantime a Democratic county convention was held, at which the feeling on the Judgeship question was predominant. Joseph B. Anthony and Dr. James Taylor were returned from Williamsport as Lewis' delegates, and John H. Cowden and Joseph Williams as Anti-Lewis. The latter, it was admitted, had received a majority of the votes cast, but the election officers threw away all such as had been given by persons unfriendly to either the State or National administrations, and returned the former. The convention, after a bitter speech from General Anthony, in which he called his opponents Federalists and "fag ends of faction," admitted him and Dr. Taylor to represent the said borough by a very decisive majority. The same body rejected a resolution offered by A. V. Parsons and aimed at General McKean, that the candidates for the Legislature, namely, George Crawford and William Piatt, Jr., should, if elected, support no person for United States Senator but an avowed friend of the President and Vice-President of the United States. The vote stood 34 to 13.<sup>1</sup> It

<sup>1</sup> Hon. C. D. Eldred, in "*The Now and Then*," Vol. III, No. 3, 1890, p. 55. Attorney-General Lewis told Martin Van Buren in the autumn of '33 "that Gen. McKean would be elected to the U. S. Senate—that that event must

will thus be seen that the McKean Senatorial and the Lewis Judicial interests became more or less welded together by the campaign, and that this time General McKean won, both for his plans for himself and his plans for Lewis. For the appointment of Attorney-General Lewis as President Judge of the old Eighth Judicial District was made and the commission drawn on October 14th, and the man to take his place at Harrisburg was none other than George M. Dallas, of the city of Philadelphia; so that in December this adjustment of interests produced the result General McKean desired and landed him in the United States Senate by a vote of 74 to 57 for all others. With these rapid combinations of various events the distinguished young ex-Attorney-General, now but thirty-five years of age, passed, as he believed, from the exciting conflicts of the bar and political arena into a judicial career which, at that time, was an appointment for the rest of his natural life, although the rumblings of discontent with judicial life-tenure were beginning to be heard all over Pennsylvania.

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not be considered as indicative of hostility to a National Convention or to you [Van Buren]—and that the State would decide, immediately after Gen. McK's election, in favor of a National Convention, and ultimately in favor of your election as chief magistrate to succeed our venerable chief now at the head of affairs." This is said in a draft of a letter to Van Buren of March 15, 1835, among the Lewis Papers, and marked "Not Sent." He adds "all this has come to pass."

## CHAPTER VIII

HE BECOMES PRESIDENT JUDGE OF THE EIGHTH JUDICIAL  
DISTRICT, COMPOSED OF NORTHUMBERLAND, LY-  
COMING, UNION AND COLUMBIA COUN-  
TIES, AND SERVES TEN YEARS

1833

Judge Ellis Lewis, of the Eighth Judicial District of Pennsylvania, was but thirty-five years of age when he succeeded to the office vacated by the resignation of Judge Chapman. Short as the young jurist's life was, it extended almost back to the time when the entire State was divided into but five districts, and his territory was a part of the imperial old Third of 1791.<sup>1</sup> In 1806, the number had doubled as new counties were created, and old Lycoming and Northumberland were in the Eighth District, which seemed devoted chiefly to the forks of the Susquehanna.<sup>2</sup> By about the time he was admitted to the bar the original number was trebled, when the Fifteenth was erected out of the old Seventh in the southeast corner.<sup>3</sup> Meanwhile Bradford and Tioga had been created and been successively in the Eleventh and Thirteenth, and within six months after his commission was issued the districts had become nearly four-fold the number in '91, the act of April 14, 1834, creating an Eighteenth District. This latter act, however, left the old Eighth still containing Lycoming and Northumberland with Columbia and Union as their companions, and it was at Sunbury that Judge Lewis held his first court, and injected new vigor into the proceedings at all four county seats near the forks of the Susquehanna.

It is neither important nor desirable to go into the local details of these four courts during the decade of his President-judgeship, even if all the records made

<sup>1</sup> See "The Life and Times of Thomas Smith, 1745-1809," by Burton Alva Konkle, for map of the districts of 1791.

<sup>2</sup> Act of February 24, 1806.

<sup>3</sup> Act of March 12, 1821.



it possible, which they do not. This period is not distant enough to warrant that kind of detail. The human elements in the situation, which are significant and have a bearing on large future relations in the life of such a jurist, always illuminate the larger movements that are the real texture of history. The qualities of a jurist which make him of interest outside of the technical field, rather than within it, are the ones which have special significance, when he has important relations to the constitutional history of the judiciary, rather than as a conventional administrator of justice. The latter will be found sufficiently in the technical field of every lawyer's education, but the former must be of interest to every citizen student of the history of political institutions, for they were of decided interest and importance to those contemporary citizens in whose time these great movements were wrought out. And in no field is this more true than in Pennsylvania where, from the opening struggles over the constitution of the Provincial Supreme Court in 1684 to the present time, no governmental movement has been of more jealous concern to the people than that pertaining to judicial constitution. It is this phase of the local judicial career of Judge Ellis Lewis that enlists interest here. It was impossible for him to be only the technical administrator of justice on the bench. His training as an editor had given him the habit of popular out-look and a constructive attitude toward popular needs. His training as a writer had given him an avenue to the mind of the citizen—a power that has been the making of more than one public man. His experience as a political force in the ranks of the Democracy gave him an influence which was always full of potency, even when it took no practical form. But, probably, it was his tremendous capacity as an independent student, and his equally intense energy as a constructive and dispatchful administrator, that won him the respect of his constituency in courts which had suffered for some time from alleged lack of these qualities.

A judge whose decisions convince his constituency and the parties interested that justice is so well administered in his court that they need no relief in a higher



ELLIS LEWIS  
From an early miniature,  
in possession of Miss Josephine Lewis,  
Philadelphia



court has achieved an enviable result, and the jurist who, while not securing this happy result, generally has his decisions supported by that higher body, has won scarcely a lesser degree of success—as that product is usually estimated. That judges have been reversed and still have been right is said to be among the phenomena not classed as impossible. The cases in the Eighth District which were appealed to the Supreme Court were, as has been indicated, always heard at Sunbury, and in July following the commission of Judge Lewis one of his cases went before that body, with the result that his decision was reaffirmed.<sup>1</sup> It was a case that illustrated his attitude, already well-known in his practice as an attorney, in which, other things being equal, he sympathized with the actual holder of land in a region which had long suffered from defective titles. "In Pennsylvania at this time," said Justice Rogers in closing the opinion of the court, "it is of paramount importance that people should be quieted in their possessions. The increased value given to lands, in consequence of the discovery of mineral wealth, has induced a spirit of speculation, which will give rise to great litigation. It is important, therefore, that those who have been in quiet possession of land should not be disturbed, to give it to those who are only induced to lay claim to it in consequence of the change in value."

The second of his cases appealed at the same term was attended with no such fortunate results, although, in Justice Sergeant's opinion, the causes of it seem to arise as much from lack of experience on the bench as any other possible cause.<sup>2</sup> Nor was he more fortunate in the next case at this court, and a new trial was awarded in this as well as the preceding, this time under Chief Justice Gibson's expression of the court's opinion.<sup>3</sup> Two other cases, however, were affirmed at this term, so that the record, for a first experience, was not discreditable by any means.<sup>4</sup>

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<sup>1</sup> *Caul vs. Spring*, 2 Watts' Reports, 390.

<sup>2</sup> *Bellas vs. Lloyd*, 2 Watts, 401.

<sup>3</sup> *United States vs. Mertz*, 2 Watts, 406.

<sup>4</sup> 2 Watts, 418 and 426. In the correspondence of Governor Wolf, at the Historical Society of Pennsylvania, is a letter of Judge Lewis's of 9 February, 1835, saying that he had consented to go as delegate to the March convention to head off some malcontents from Philadelphia, Northumberland, Lancaster and Columbia, but he would send a man in his place if the Governor thought it unwise for him to go.

At the Sunbury session of the Supreme Court in 1835 there were ten appeals from the decisions in the Eighth District, six of which were affirmed and four reversed. The following year the record was six affirmations and five reverses, and the year 1837 furnished the same ratio, while that of 1838 was four to four, with another case chiefly affirmed, but partly reversed. The year 1839 gave an equal number of each, among the sixteen appeals from his district, and among the fourteen cases the following year, eight were affirmed.<sup>1</sup> These records serve to show a general situation, which would of course be modified by the peculiar conditions of each case. The general result is, however, that approximately but a half-dozen cases out of the large annual list of four courts were, for any reason, reversed, an average of something more than one case a year in each court.<sup>2</sup>

Of the four county-seats in which his duties required him to hold court, he naturally chose Williamsport as his residence, and a daguerreotype view of his home there is given herewith. The oldest of these county-seats was, of course, Sunbury, where he took his oath of office on November 4, 1833. The other places were Danville, in Columbia, and New Berlin, in Union, both of which have been long since superseded as local capitals. It would be of interest were the leading decisions of district courts of that day preserved as they are to-day, to examine some characteristic opinions or charges that would give clear ideas of his personal and judicial qualities as they developed from year to year. While this is impossible, however, one instance, and a most picturesque and pathetic one, has come down to these days with unusual accuracy and detail—an enterprise due to no less a personage than the late Governor William F. Packer, then a newspaper man. The case began at the November term of 1835, at Williamsport, before President Judge Lewis and his associates, Judges John Cummings and Asher Davidson, and on the 30th of the month mentioned Judge Lewis gave the following charge to the Grand Jury: "The Court have understood that a bill of Indictment will be laid before you, containing a charge of murder in the first degree. In such cases it

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<sup>1</sup> Watts' Reports.

<sup>2</sup> Watts' and Sergeant's Reports.

is not unusual for the Presiding Magistrate to give some instructions in relation to the nature of the duties of the Grand Jury. As most of you are already familiar with these duties, the remarks of the Court will be brief. By the common law, MURDER is defined to be the *unlawful killing of a person, of malice aforethought*. By our Act of Assembly of the 22nd April, 1794, all *murder perpetrated by means of poison, is declared to be murder in the first degree*, and is punishable with death. As the bill about to be laid before you charges the accused with having committed murder *by means of poison*, the offense charged is that of *murder in the first degree* and nothing else. It is therefore unnecessary to trouble you with a definition of the various kinds of homicide punishable by law.

"It is not your duty to *try the merits* of each case, but you are merely to inquire whether there is sufficient ground to put the accused on trial. As a general rule, therefore, you are only to hear the witnesses for the commonwealth. It is necessary that at least 12 of you should agree in finding a bill, and when that number, or more, agree to it, the foreman will endorse it 'true bill,' and sign such endorsement as foreman. Should any bill be rejected, it is to be endorsed 'no bill' or 'Ignoramus' and signed in like manner. In cases under the degree of felony, where a bill is returned 'Ignoramus,' it is your duty to determine whether the county or the prosecution is to pay the costs; and in case you decide that the prosecutor must pay the costs, you are to name him in writing, signed as already mentioned.

"The oath which has just been administered requires you to 'keep secret the commonwealth's counsel, your fellows and your own.' This includes the testimony of the witnesses who may be examined before you. This testimony is not to be disclosed unless for the purposes of public justice. Where a Grand Juror discovers that a witness is materially varying from the evidence which he gave before the Grand Inquest, it is proper for him to disclose the fact, in order that justice may be done. Unless for the purpose of public justice the disclosure is not to be made. On the one hand it might expose the witnesses to the tamperings or menaces of the party



accused, and the truth might, by those means, be perverted or suppressed. On the other hand such disclosures necessarily tend to create excitements in the community, which interfere with that fair and impartial trial to which all are entitled under the laws of the country."<sup>1</sup>

The trial lasted nearly all winter. Deputy Attorney-General James Armstrong and F. C. Campbell were for the Commonwealth and Anson V. Parsons, Robert Fleming and Wm. Cox Ellis for the defendant, John Earls. A case of revolting degeneration was developed. Earls, a river-man, had deserted one wife and taken another by common-law marriage, with whom he had lived and reared a family. He became infatuated with another woman in the neighborhood and began to consider measures for making way with the mother of his children by poison. After several failures, he succeeded shortly after she gave birth to a child. "This important trial," said Judge Lewis in his charge to the jury, "is gradually drawing to a close, and the period is fast approaching when you will be relieved from the arduous duties in which you have been engaged. The court have witnessed with regret the privations to which you have been subjected. Ever since you were empannelled in this cause, you have been placed under the charge of the officers and kept constantly together. But this was necessary, in order that you might be preserved free from the excitement which agitates the public mind, and thus be able to discharge the solemn obligation you are severally under to determine this cause according to the evidence delivered before you in court, and not according to popular feelings and prejudices. It is unknown to the court, and immaterial to you, whether the excitement is for or against the prisoner at the bar. It is sufficient for you to know that this cause must be determined by the law and the evidence. We have no doubt of your determination to found your verdict upon these, and these only. The court have observed, with pleasure, the undivided attention which you have devoted to this cause, and that, during the whole course of the time, no juror has at any time desired to withdraw from

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<sup>1</sup> "Earls' Trials," etc., reported by William F. Packer and A. Cummings, Jr., 1836.

the court-house during the sittings of the court, either for recreation or otherwise. For this close and severe application to business, thus facilitating the progress of the cause, the court feel it to be their duty to express to you their thanks.

"In the investigation of that part of this case involving questions in medical jurisprudence, we have been greatly aided by gentlemen of science in chemistry and medicine. With the eminent scientific acquirements of Dr. Hepburn we were acquainted before, and also with the eminent professional ability of Dr. Dougal. But we were agreeably surprised to witness the great chemical knowledge of Dr. Kittoe, and the extensive professional knowledge of Dr. Ludwig. The duty of giving evidence in Courts of Justice is one of the most irksome and responsible duties which belong to the medical profession. These gentlemen have discharged that duty in a manner so candid, plain and satisfactory, and exhibiting such extensive research in the sciences which they profess, that they are entitled to the commendation of the community. It is proper that we should acknowledge the obligation in this public manner, and we do so with great pleasure.

"We have been greatly aided, likewise, by the ability with which this cause has been conducted by the professional gentlemen engaged on each side. The prisoner has been aided by three gentlemen of distinguished ability, standing among the first in the profession to which they belong; and they have discharged their duty with a zeal and ability which does them honor. The commonwealth has also been represented by gentlemen of the first character in the profession, and the manner in which they have sustained the interests of the State must receive the high commendation of the community. We have had these aids in the trial of this cause, and it seems proper that we should make the acknowledgment.

"Something has been said in the course of the argument in relation to the responsibilities which have fallen upon you. The duties you have to discharge are responsible ones; but they are responsibilities from which you are not to shrink. It is proper that you should feel these responsibilities, but a just sense of them should

have no other influence upon your minds than to induce you to examine into the case with the more care and deliberation, and to come to a determination according to the very best judgment you can command. On the one hand, the prisoner, if innocent, is entitled to demand at your hands a speedy deliverance from the jeopardy in which he is placed. On the other hand, if guilty, your duty to the commonwealth requires you to say so, in order that the law shall have its course.

"This is a criminal case. In criminal cases the jury are the judges of the LAW as well as the FACTS. The court is the constitutional organ to advise you in matters of law. It is then left to you to make such a determination as your judgment shall sanction. The prisoner at the bar stands charged with the crime of wilful and deliberate MURDER. The first count charges him with the murder of CATHERINE EARLS, by means of *white arsenic*, mingled in a bowl of chocolate. The second count charges him with the murder of the said CATHERINE EARLS by means of *white arsenic* mingled in a bowl of tea. By the common law, murder is the voluntary killing of a person of malice aforethought. If the poison was designedly administered, with intention to kill, the malice is implied. By the act of assembly of the twenty-second April, 1794, it is declared that 'all murder which shall be perpetrated by means of poison shall be deemed murder in the first degree.' It will not be necessary for you to enter into an inquiry in regard to the distinction between murder in the second degree and murder in the first degree. In this case the crime charged is that of murder in the first degree. And, under the evidence in the cause the prisoner must be entirely acquitted or absolutely convicted of the crime with which he stands charged.

"Some objection has been taken to the description of the poison. It is true that the drug is known among chemists by the names of *arsenious acid*, *white oxide of arsenic*, &c. But in France, Spain, Germany and England it is also known by the name of *white arsenic*. The term *white arsenic* is that which is most usually adopted in legal proceedings. The poison is legally and properly described by that name. While upon this question it

may be proper to remark that it is immaterial by what kind of poison Catherine Earls was destroyed. If she was murdered by the prisoner by means of poison of any kind, it will be sufficient to sustain the indictment.

"In entering upon the investigation of this cause, the prisoner is to be presumed innocent of all crime until his guilt is established by evidence. The circumstances should, to a moral certainty, exclude every hypothesis but that of the prisoner's guilt before you can find him guilty. If you can take any view of the facts which shall consist with his innocence, that view ought to be adopted; if you have reasonable doubts of his guilt, those doubts entitle him, by the laws of his country, to an acquittal. The legal test to be applied to the evidence is, is it sufficient to satisfy your understandings and consciences, beyond all reasonable doubts, of his guilt? If it is of this character, you ought to find him guilty; if it is not of this convincing character, you ought to acquit him.

"The inquiry may be divided into two branches: First, was the death of Catherine Earls caused by poison? Second, if so, was it designedly caused by the prisoner at the bar? And here it may not be improper to notice a fallacy used in the course of the argument in regard to what was called the *science of probabilities*. One of the medical gentlemen testified that in his opinion neither of the chemical tests, by itself, would be sufficient to establish, with certainty, the presence of arsenic, but that a certain number of tests would be sufficient for that purpose. It was urged that if no *one* was sufficient, all together would not be sufficient, and that a multiplication of nothings could never amount to anything. But a chemical test, indicating the presence of arsenic, is not *merely nothing*. It counts something, and a sufficient number of tests, under proper management, may establish, with certainty, the existence of arsenic. One log may not be sufficient to erect a building, but a number of logs may be sufficient; one shingle may not cover it, but a number of shingles may be sufficient for the purpose.

"The first branch of the inquiry, then, is, was the death of Catherine Earls caused by poison? In coming

to a conclusion on this part of the case, the jury will consider all the circumstances. And, first, the *suddenness* of her death. It is in evidence that she was confined on Wednesday, the fourteenth day of October, 1835, and after delivery was left by the matron who attended her as well, if not better, than usual. The next day, Thursday, the fifteenth, she sat up with her child by the fire, in order that the bed might be made—exhibited the infant to one of her daughters—gave it nourishment at her breast—ate a hearty dinner—was cheerful and pleased with the attentions of her husband, and between seven and eight o'clock in the evening ate a hearty supper, consisting, among other things, of a *pint bowl of chocolate*. In little better than an hour she was seized with violent vomiting, and between then and four o'clock in the ensuing morning she was a corpse. This, of itself, would not prove that her death was caused by poison, but it is a circumstance to be taken into consideration. In the next place, the *symptoms* are to be taken into consideration. Orfila, who is esteemed the best French writer on the subject of poisons, enumerates a large number of symptoms which may exist in cases of poisoning by arsenic, but he adds that it is rare to see them all in the same person, and sometimes all are wanting. Among the symptoms generally attending cases of that kind, according to the testimony of the medical gentlemen, are: vomiting, pain in the stomach and all over the body, a sense of burning heat in the stomach, intense thirst, efforts to vomit, gagging. The evidence is, that Catharine Earls vomited till she could vomit no more—gagged—complained of pain all over, and called for drink with the last words she ever spoke. You will judge whether the symptoms described by the medical witnesses as generally existing in cases of poisoning by arsenic were to be found in the case of Mrs. Earls. If so, it is another circumstance worthy of consideration. The next matter worthy of consideration is: the *appearance of the body on dissection*. These are not uniform in cases of poisoning by arsenic; but the appearances which, the authorities say, are sometimes to be found, are livid stripes or patches on the body, the coats of the stomach highly inflamed and easily separable, the



duodenum and intestines also inflamed, the brain turgid, the cavities of the heart filled with blood. You have heard the evidence of the physicians who conducted the *postmortem examination*, and will judge whether these appearances were found upon that occasion.

"According to the testimony of the physicians, all the cavities of the heart, not only the curricles, which receive the blood into it, but the ventricles, from which it is made to pass out, were filled with blood; and that this appearance was unusual and unnatural.

"When we have the evidence that this strong muscular organ was thus suddenly arrested in the performance of its last pulsation, it may be regarded as a circumstance indicating the influence of some violent and unnatural cause. Still, this is not, of itself, to be regarded as sufficient proof that the death was caused by poison. It is to be taken into view, with the other facts in the cause. The next subject for consideration is the chemical tests which were applied to the contents of the *stomach* and *duodenum*, which were conveyed to Muncy for examination. Here, in the presence of the scientific gentlemen assembled, two of the usual tests were applied; first, the *nitrate of silver*, which produced the *yellow precipitate*, which should be produced if arsenic were present; and, secondly, the *sulphate of copper*, which produced the *grass-green*, called *Scheele's green*, a paint with which many of you are familiar, and which is composed of arsenic and copper. The results in these cases were such as should have been produced, according to the laws of chemistry, if arsenic were present. These two tests are sufficient of themselves to establish the presence of poison; but they may be regarded as indications which should be considered with the other facts in evidence. A portion of the contents of the stomach was taken to Milton, where other experiments were made, in the presence of Dr. Dougal and Mr. Morrison, a chemist of that place. The *ammoniacal sulphate of copper* produced the *Scheele's green*—the *sulphuretted hydrogen gas* produced the *yellow sulphuret* or *orpiment*, and this precipitate, on being sublimed, produced the *metallic ring*. These results were such as, by the laws of chemistry, ought to have been produced, if white arsenic were pres-



ent in the substance to which the tests were applied. These are strong indications of the presence of arsenic, but as the ring is not so clearly exhibited on the tube as is usual in such cases, and as no tests were applied to it for the purpose of proving it to be the metallic arsenic, it is not to be regarded as *conclusive* evidence of the presence of that poison. The remaining portion of the contents of the stomach and duodenum were conveyed by Mr. Kittoe to Philadelphia, and there in his presence and in the presence of that eminent chemist, Dr. Mitchell, further experiments were tried. It was discovered in Philadelphia that a *white powder* had subsided, and was deposited at the bottom of the jar which contained the fluid intended to be examined. This was supposed to be the poison. A portion of this was placed in a tube and sublimed over a spirit lamp with the usual preparations for producing the metallic arsenic. A fine and well-defined arsenical ring was produced, which you have seen exhibited before you. Some portions of this ring were placed upon a live coal and gave out the alliaceous odour of arsenic, which is a smell somewhat resembling garlic. Other portions of the metal were tested with the *ammoniated sulphate of copper*, and produced the *Scheele's green*. Another portion of the *white powder* was then dissolved, and this solution, with the *ammoniated sulphate of copper*, in like manner produced the *Scheele's green*. With *ammoniated nitrate of silver* it produced the *canary yellow* which is produced by arsenic. By the laws of chemistry this yellow arsenite of silver changes its color by the action of light from yellow to black, which you find from the specimen exhibited in the case here. A part of the solution of the white powder found was then tested with *lime water*, which produced the characteristic results of arsenic, a *white flocculent precipitate*. The remaining portion of the solution of the white powder was precipitated by a stream of *sulphuretted hydrogen*: the precipitate was of a deep sulphur yellow, characteristic of the presence of arsenic. A portion of this precipitate, under the usual management for subliming, produced an arsenical ring; the metallic arsenic. In addition to all these experiments, a vial containing a portion of the white powder itself, as it was found in

the stomach, is produced here in court, subject to the application of any further test which may be thought necessary to determine its nature. We have, further, the opinion of gentlemen of medical and chemical science that this substance is indubitably arsenic, and that in their opinion the death of Catherine Earls was caused by arsenic. To entertain any doubts upon this part of the case after all this evidence, standing as it does unrebuted and unrepelled, would be to doubt against a mass of overwhelming testimony; against the opinions of gentlemen of high professional skill, and against a combination of some of the highest chemical tests which can be furnished by the lights of science. The court have no doubt whatever upon this part of the case, and, as it belongs to the department of medical jurisprudence, we have deemed it our duty to express the clear conviction which this evidence has produced in our minds. Still you will remember that in this, as in all other questions in this cause, you are the judges. If you come to the conclusion that her death was caused by poison, the next inquiry to which we are brought is: was it designedly caused by the prisoner at the bar? This is a matter of fact which belongs peculiarly and exclusively to you to determine.

"In proceeding to determine this question, you will remember that you cannot convict unless the chain of circumstances is so strong and so connected together as to exclude every hypothesis but that of the guilt of the prisoner; and that if there is any view which can be taken of the facts of the cause which shall consist with his innocence, it is your duty to adopt that view, and to render a verdict in his favor. The hypothesis offered by the prisoner's counsel is, that Catherine Earls destroyed herself—that she committed the crime of suicide. In support of this defence, the declarations of the deceased have been given in evidence. These declarations may be directed into two classes: first, those indicating a state of despondency and that she would not live long, or would not survive her approaching confinement. And, secondly, those indicating a specific intention to destroy herself by poison. To account for the general declarations of despondency, the common-

wealth's counsel have shown by two witnesses, Dr. Power and Dr. Ludwig, that this is not infrequent with ladies in the condition of pregnancy. You will judge whether these declarations were produced by this cause alone, and will also determine whether, if they were so produced, the state of mind thus occasioned would be likely to continue after she had passed in safety through the hour of nature's extremity. The specific declarations of an intention to destroy herself depend chiefly upon the testimony of ———, ———, ———, and, perhaps, ———.<sup>1</sup> If this evidence is believed, you verdict ought to be in favor of the prisoner. But the evidence of self-destruction depends mostly upon the testimony of ———, ——— and ———. In deciding whether these witnesses are to be believed, you will take into consideration the evidence adduced by the commonwealth to impeach their character for truth and veracity. So far as ——— and ——— are concerned, no attempt whatever was made to sustain their reputations for truth. You will also compare this with the circumstances attending her death—her willingness and anxiety to take remedies to remove her complaint.

"It is in evidence that while she was suffering with pain and violent vomiting, she declared in answer to an inquiry as to the cause of her suffering that *she did not know*. If she had taken the poison herself, for the purpose of self-destruction, she did know the cause of her distress, and must have known in that case that she was shortly to appear before the bar of God. It would be singular if, at such a time, she would falsify. If you should come to the determination that she did not destroy herself, the inquiry still remains whether her destruction was designedly caused by the prisoner at the bar.

"Among the facts in support of the indictment the commonwealth have given in evidence the purchase of arsenic by the prisoner, on the thirteenth of October, the day before the confinement of Catherine Earls. But the prisoner has shown that he was in the habit of using this drug in the destruction of minks which visited his fish basket—that he purchased it at other times for this

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<sup>1</sup> Two of whom were sisters of Earls' paramour.

purpose, and that he placed some upon a fish in his basket the day before the death of his wife. This evidence diminishes the force of the evidence arising from the purchase of arsenic. Still, the fact remains that he had the arsenic within his reach, and knew its deleterious properties. And if the other evidence in the cause satisfies you that he used it for the purpose of destroying his wife, and by that means accomplished that object, you ought to find him guilty. If the other evidence does not satisfy you of his guilt, you ought to acquit him.

"As one of the links in the chain of circumstances which the commonwealth have undertaken to establish, they have attempted to show a motive for the commission of the crime. With this view, evidence was given tending to show that the prisoner's affections had become estranged from his wife—that an intimate and close attachment existed on his part towards ——, and that the deceased stood in the way of the prisoner, so that he could not enjoy the gratification arising from this improper intimacy, and that therefore, it is alleged, there was a motive to remove the deceased out of the way, as an obstacle which interfered between the prisoner and the object of his desires. This is resisted by the prisoner, on the ground that there is no evidence of a *marriage in fact* between the prisoner and the deceased, and it is urged that if there was no marriage there could be no motive to dissolve it. It is in evidence that the prisoner and the deceased lived and cohabited as man and wife for more than fifteen years! that they were, during that time, the parents of seven children, and that they were constantly recognized by each other as husband and wife. This evidence is not rebutted by any counter evidence. The court have already instructed you that the prisoner is to be presumed innocent of all crime until his guilt is established by evidence. That principle will apply to this part of the case. The presumption is that this cohabitation was an innocent cohabitation, in accordance with the laws of the land, and therefore it was under the sanctity of matrimonial obligation. It is not to be presumed, without evidence, that these parties were living, during all this period of time, in open adultery and in violation of the law. If,

therefore, the attachment to —— is shown to be so strong as alleged, there is sufficient evidence of the marriage with the deceased to make out the motive assigned. The jury will bear in mind that the motive is only one link in the chain of circumstances, and that the intimacy with ——, no matter how criminal it may have been, is not to be regarded as proof that the prisoner is guilty of the crime charged in the indictment. One crime is not to be inferred from the existence of another.

"The jury will determine from the evidence whether the prisoner seriously attempted to escape from those who had him in custody on this charge. If the prisoner made a serious attempt to fly from the justice of his country, it may be regarded as a circumstance against him, because the 'guilty flee when no one pursueth.'

"We have now, gentlemen, discharged the last duty imposed upon us until your verdict shall require other at our hands, imparting FREEDOM or DEATH to the prisoner at the bar. In the language of the law, and in the language of the counsel for the prisoner, he has placed himself upon God and his country. You are that country. If innocent, he is entitled to a speedy deliverance—if guilty, the obligation you have taken require you to say so. May that Omniscient Judge, at whose dread chancery we all must answer for our proceedings here, guide you to a righteous and correct determination of this all-important cause. Gentlemen, the cause is with you."

The jury found the prisoner guilty, and Judge Lewis pronounced the sentence, which follows: "The court cannot conceal their deep and unutterable emotions at the melancholy predicament in which you are placed. They sympathize deeply with you and with the innocent little ones who still cling around you in this distressing hour of extremity. Whatever you may suggest for their welfare and protection will be cheerfully and faithfully attended by the court. Painful as may be the task, and deeply as we are affected on this solemn occasion, we are required to perform our last melancholy duty in this cause by pronouncing the sentence of the law.

"You have been charged with the crime of wilful and deliberate murder. The humanity of the law extended



to you the privilege of twenty peremptory challenges, without assigning any cause whatever, and as many more as you could assign cause for. You enjoyed the full benefit of this humane provision, and a jury was thus empanelled of your own selection. You have had the benefit of able and distinguished counsel, whose zealous and talented exertions in your behalf have done honor to their heads and hearts. In the progress of the cause, all doubtful questions which arose were uniformly solved in your favor. If you offered evidence of doubtful admissibility, your evidence was uniformly received. If the commonwealth offered similar evidence and you objected to its admission, such evidence was uniformly rejected. If you offered evidence out of its proper order in time, it was discretionary with the Court to receive or reject it, but your evidence was constantly received. And in accordance with another humane provision in the law, the jury were instructed that if they entertained reasonable doubts of your guilt, those doubts entitled you to a verdict of acquittal. You have therefore had as full and fair a trial as the laws of the country ever extend to any individual whatever.

"Of all crimes, that of wilful and deliberate murder is perhaps the most foul and unnatural. Of all means by which a deed so dire can be committed, that of POISON evinces, perhaps, the most cold-blooded deliberation. Of all persons who may be the subject of this crime, the wife of your bosom—the mother of your children—the partner of your lot—whose name and whose civil existence was merged in your own, should have been the last to be thus destroyed in the hour of unsuspecting confidence. Of all occasions for a deed so dreadful, the selection of that period when she was prostrated upon the bed of her confinement, with the new-born babe in helpless infancy by her side, manifests 'a heart the most regardless of social duty and fatally bent on mischief.' Of such a murder, and with such attending circumstances, a jury of your country have pronounced you GUILTY.

"It was a deed of darkness—but, as if the finger of Providence had interposed, in accordance with that well-



established truth that 'murder will out,' public suspicion was aroused. The grave gave up its contents—the heart whose affections had clung around you for more than fifteen years, was the first to proclaim, by its ventricles filled with blood, that its pulsations had been suddenly arrested by the operation of some sudden, violent and unnatural cause. The chemical affinities of nature's elements rushed together to confirm the charge, and to identify the poisonous drug by which the life of this unhappy woman was destroyed. The solemn spectacle this day presented may be a lesson to all around, and to those who follow us in all time to come, that no deed of dark iniquity can hope to escape detection. As your time must necessarily be short in this world, you are admonished to prepare to appear at the bar of that Almighty Judge, whose Omniscience enables him to distinguish with unerring certainty the innocent from the guilty. *We* are to take the verdict as establishing your guilt with absolute certainty, and must proceed to pronounce the sentence of the law, which is that you, JOHN EARLS, be taken hence to the place from whence you came, within the jail of the county of Lycoming, and from thence to the place of execution, within the walls or yard of the said jail; and that you be there hanged by the neck until you are DEAD! *And may God have mercy upon your soul.*"

The case was appealed to the Supreme Court, which in April denied the appeal, and on the 21st of May, three days before the execution, the prisoner made a full confession of the deed. As has been intimated, the proceedings were published, and it may be added that this was done to procure a fund to care for the orphaned children. The charges, instructions and sentence of the court are, in a sense, a climax in Judge Lewis' experiences on the bench of the Eighth District. It illustrates qualities of mind, heart and character at this period, at his best, and happily pictures his qualities as a judge. It also shows him in the field of medical jurisprudence, in which he became greatly interested and well-informed, as shall presently appear. Beck's *Medical Jurisprudence*, edition of 1851, says of this trial: "I know of no case to which I would sooner refer than this as a proof of

the advanced state of medical jurisprudence in this country."<sup>1</sup>

It was during 1837 that Secretary of War Poinsett appointed Judge Lewis on the board of visitors to the West Point Military Academy. By their plan of organization the Judge was made chairman of the sub-committee on the department of moral, religious and political instruction, and in the report which he wrote questioned the result of instruction in constitutional law; "while the subject of national law," said he, "is, for the same reason, entirely omitted in the present course of studies." He then notes that the "science of war" is a prescribed study. "This branch of education may be well understood to extend not only to those principles of the law military which regulate the rights and duties of the officer and the soldier, but to the fundamental doctrines of international law, which, having been adopted as the rules of action by all civilized nations, regulate their mode of warfare, and distinguish it from the cruel butcheries of the savage. War, under any circumstances, is one of the greatest calamities which can befall a nation. If it must exist, it is surely the duty of every people to mitigate its evils by requiring that it shall be conducted according to the law of arms among civilized nations. Every cadet is intended to be qualified for command; and every commander may, in the ordinary prosecution of his duty, be placed in a situation where ignorance of international law would be an unpardonable disqualification for the discharge of his military duty. This disqualification might betray him into acts which would involve his country in war, and tarnish the laurels won by his bravery. The value of this branch of education is acknowledged in civil pursuits; in military life, it appears to the committee to be of still greater importance; and that it should receive its due attention in this institution cannot be too strongly urged upon the War Department." He also urged the study of military law as equally important to internal conditions.<sup>2</sup>

An amusing but significant incident, showing how widely popular his ideas as a judge had become even

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<sup>1</sup> Vol. II, p. 536.

<sup>2</sup> The *Democratic Review*, 1847, p. 361.

at this time, occurred about two years after the above case was tried. Early in 1838, shortly before the Iowa Territory was cut out of Wisconsin on June 12th following, and when courts were not yet ready, two men were caught charged with passing counterfeit money. Dubuque was then a frontier settlement only five years old—established the very year that Ellis Lewis became a judge in “the far east.” “As the people had no other court in operation at the time, what is known as a lynch court was constituted. It consisted of a sort of town meeting, with a gentleman of the name of Peter Hill Engle acting as president. The two men accused were fairly tried and convicted. The testimony against one of them was perfectly clear; he had passed a number of spurious notes, and had a large quantity in his possession. He was sentenced to receive a certain number of lashes, as there were no jails or penitentiaries. The other convict had passed no spurious notes, nor had any been found in his possession; on the contrary, all the money in his possession, amounting to eight hundred dollars, was admitted to be genuine. But the evidence was that the two had lodged at the same inn the night before, and had travelled together that day. This primitive tribunal drew the inference, from the circumstances, that *one* passed the notes, and the *other* was the treasurer, to take charge of the genuine money received in their business operations. The one found guilty of being the treasurer of the company immediately appealed from the decision. On being asked to what tribunal he appealed, he paused a moment, and then answered: ‘I appeal to Judge Lewis, of Pennsylvania.’”

“The record, with the evidence,” says David Paul Brown, who gives the incident in his *Forum*, “was accordingly certified to Judge Lewis, by President Engle, with his written opinion, giving the reasons of the court for the decision. The defendant, whose name was Titus Losey, had been sentenced to pay a fine of eight hundred dollars, and the record showed that the fine had been collected. Judge Lewis entertained the jurisdiction, and gave a written opinion that the mere circumstance of being found in company with a counterfeiter was not sufficient to repel the general presump-

tion of innocence; that man was naturally a social animal; that this feeling would be manifested more readily where two strangers meet in a new country, and happened to lodge in the same inn, and to be journeying in the same direction. On the whole evidence, the judgment below was reversed, and restitution of the fine (which had been collected) awarded. The record was duly remitted to Judge Engle, to be carried into execution, and the decision was promptly obeyed and the money refunded."<sup>1</sup>

During the year 1838 occurred an event that had a most important bearing upon the career of the President of the Eighth District. His predecessor had practically spent his entire active life in that position, and Judge Lewis might have followed a like course had not popular discontent with some features of the current State constitution been coming to a climax since long before he came to the bench. A vote had been provided for when Governor Wolf had signed the act of April 14, 1835, and the people had voted 86,570 to 73,166 for revision of the constitution. A call was issued by Governor Ritner on March 29, 1836, and the convention opened May 2, 1837. The result was ready for ratification at the October election of 1838, when the "Constitution of 1838"—as it is sometimes called, although more properly the "Amendments of 1838 to the constitution of 1791"—was adopted by a bare majority of 1212 votes. The counties which went against it were Cambria, Chester, Dauphin, Delaware, Franklin, Huntingdon, Indiana, Juniata, Lancaster (by the largest majority of all), Lebanon, Lehigh, Mifflin, Montgomery, Northampton, Northumberland, Perry, Philadelphia, Schuylkill, Somerset, Union and York.<sup>2</sup> And what was the meaning of this change in the old constitution? "This instrument," said Governor Porter, who came to the executive chair in the upheaval, which was accompanied by "The Buckshot War; or *The Last Kick of Anti-Masonry*"—to use a current title of the day<sup>3</sup>—"gives to popular suffrage

<sup>1</sup> The *Forum*, Vol. II, p. 120. Mr. Brown is in error as to the date, as he is in placing Lancaster in the Eighth District, and his service there at twelve years. The incident was evidently procured from Lewis himself, who was living at the date of Brown's article.

<sup>2</sup> "Proceedings and Debates," 1837, p. 261.

<sup>3</sup> "Life and Speeches of Thomas Williams," 1806-1872, by Burton Alva Konkle, Vol. I, p. 120, et al.

the decision of many appointments heretofore vested in the executive, and changes the duration of the judicial tenure from that of good behavior to a term of years. It shortens the period of eligibility to the executive chair, and reduces the Senatorial term, enlarges the right of suffrage, and changes other provisions, all of which are important in the conduct of the government of the State."<sup>1</sup> In other words, it was a victory for popular suffrage and an effort to strike a blow at the political system which centralized so much patronage in the gubernatorial office. It was also a long Jeffersonian step toward making the judiciary responsible to the people alone. It was an echo of the contest between the constitution of 1776 and that of 1790. In the convention a delegate from Philadelphia stated that Pennsylvania had had the limited tenure; "The people have never asked a change in that system," he exclaimed. "In Pennsylvania it was changed by an act of usurpation in 1790; and the people, ever discontented with the change, are now about to right themselves." "I confidently trust," he continued, "that Pennsylvania is now about to return to the virtuous institutions of which she was wrongfully deprived; and I look forward with hope and confidence for the day when there will not exist a life officer in the United States of America."<sup>2</sup> The second section of the fifth article, as amended, provided that the president judges' terms should be ten years and the schedule of inauguration of the amended instrument provided, among other things, that the commissions of such judges as had not yet served ten years should expire on the 27th of February next following the expiration of his decade of service. Judge Lewis, therefore, knew that as his decade would close in October, 1843, his commission would expire on February 27, 1844.

Probably the most notable of the cases which came before him in the Eighth District was one of both national and international interest, which was tried near the close of his decade there. In August, 1842, a case came before Judge Lewis' court at Williamsport in which a Baptist minister by the name of Hall asked for protection against the threats of a man named Arm-

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<sup>1</sup> Governor Porter's Message, of January 15, 1839.

<sup>2</sup> "Proceedings and Debates," 1838, Vol. X, p. 192.





THE LEWIS HOME IN WILLIAMSPORT, PENNSYLVANIA  
From a daguerreotype in possession of Miss Josephine Lewis,  
Philadelphia





strong, because the latter's daughter, a minor, who had been baptized in her mother's faith (Presbyterian) had been re-baptized by immersion by Hall, against the father's absolute prohibition. The court placed the father under bonds to keep the peace, but also found Hall's action unlawful. After treating of the nature of parental authority, and quoting Dr. Adam Clark's commentaries, Paley's Ethics, and President Wayland, of Brown University, he shows the common law on the subject. Even "the highest judicial power in the commonwealth," said Judge Lewis, "dare not attempt to estrange the child from the religious faith of its parents. Shall this power be exercised by a private individual because he happens to be a minister of the gospel! Shall any man, high or low, be allowed to invade the domestic sanctuary—to disregard the parental authority established by the Almighty, to set at naught the religious obligations incurred in behalf of the child at its baptism—to seduce it away from its filial obedience—or even to participate in its disregard of parental authority, for the purpose of estranging it from the faith of its parents, or introducing it into a religious denomination different from that to which its parents belong? God forbid that the noblest and holiest feelings of the human heart should be thus violated—that the endearing relations of parent and child should be thus disturbed—that the harmony of the domestic circle should be thus broken up—and that the family altar itself should be thus ruthlessly rent in twain and trodden in the dust.

"One of the members of this court is a minister of the gospel of the Methodist persuasion, and he makes no claim in behalf of that denomination to the exercise of any such authority. Another of the judges is attached to the Episcopal church,<sup>1</sup> and he repudiates every pretence of such a claim on behalf of that church—the remaining judge belongs to no particular religious denomination, and he denies to all alike the exercise of any such power. No member of this court belongs to either of the religious societies whose rights have been brought into conflict in this investigation. This decision must therefore be free from denominational influences.

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<sup>1</sup> Judge Lewis himself left the Friends and was at this time a vestryman of the Episcopal Church at Williamsport.

It is as much in protection of parental authority among the Baptists as it is in affirmance of similar rights among the Presbyterians. The principle of parental authority and filial obedience has its home in the human heart—is in accordance with the law of nature, and will ever be near and dear to every good man of every religion under the sun. It has already been remarked that there is no limit to that authority save that which is necessary for the preservation of the health and morals of the child. Without the slightest disrespect for the Baptists, for whom there is every respect for their virtues and piety, it may safely be affirmed that the morals of the child were not endangered by remaining within the folds of the Presbyterian church, in which it had been baptized, and to which its mother belonged. There was therefore no just ground for interfering with the parents' authority, or for participating in the act of filial disobedience committed by the child. The proceeding cannot be justified under any claim founded upon the rights of conscience. The child whose conscience stimulates it into open rebellion against the lawful authority of its father, stands more in need of proper instruction and discipline under that authority than any other. If every child, under a claim founded on the supposed rights of conscience, were allowed to carry into effect every decision of its immature judgment where is this to end? Who shall prescribe limits to the crude conceptions of its youth and inexperience?—shall it be allowed, under this pretence, to violate the law of God?—to repudiate the Christian religion? to become a Jew or a Mohammedan? Or, retaining the Christian name, shall it be allowed to mingle with the Battle-axe community, who make it a matter of conscience to disregard the holy institution of marriage? Or, upon this pretence, shall the beloved daughter of a Christian parent, in a moment of delusion, and in the tender years of her minority, be allowed to become one of the secret wives of the Mormon prophet?

"It is dangerous to depart from established principles. Parental authority is not to be subverted so long as it is exercised within the limits which the law has prescribed. It is the duty of the parent to regulate the

conscience of the child by a proper attention to its education; and there is no security for the offspring during the tender years of its minority but in obedience to the authority of its parents, in all things not injurious to its health or morals.

"We wish it to be distinctly understood that no imputations are cast upon the motives of Rev. Mr. Hall. We believe that he acted conscientiously as he conceived to be right. But, in our opinion, he has transcended the divine and human law in disregarding the authority of the father over his offspring while in its minority. This is the opinion of the constitutional authority—the result of our conscientious convictions of the law, and it is hoped that he will feel himself bound to respect it accordingly in any after proceedings. In refusing to render to Cæsar the things that are Cæsar's, he has fallen under the condemnation of the law. It is therefore ordered that he pay the costs on this application."<sup>1</sup>

"This opinion," says an editorial in the *Daily Pennsylvanian*,<sup>2</sup> "was republished almost universally throughout this country, with the cordial approbation of every religious denomination, except a few of those who belonged to that of the offending preacher. The Roman Catholics themselves were among the loudest in their tones of approbation. The Hon. Joseph R. Chandler, then editor of the *United States Gazette*, took occasion to say that his impressions were decidedly with Judge Lewis. Mr. Chandler is an eminent and intelligent Roman Catholic, and now represents this country at Naples. But this is not all. We have been informed that a Roman Catholic of the highest ecclesiastical standing in this country published a work in which the decision of Judge Lewis was cited with the cordial endorsement of the author. That work, in the Latin language, has, it is said, for years formed part of the Pope's library, and the Pope himself has referred his American priests to the book and to the decision in terms of the highest gratification." As soon as it was published Chancellor James Kent made a note of it for a revised edition of his commentaries and wrote Judge Lewis that he had

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<sup>1</sup> United States Criminal Law. Lewis, pp. 20-24.

<sup>2</sup> Philadelphia, December 30, 1858.

done so, "as a just explanation and application of the parental authority, to a case like the one before you."<sup>1</sup> Robert C. Grier, afterwards of the Supreme Court, called it "clear as a demonstration, and the conclusion incontrovertible, by any who acknowledge themselves bound by the law of the land, or the word of God \* \* \*,"<sup>2</sup> while President Wayland described it as "sound in principle and impartial in spirit."<sup>3</sup>

At this point it is necessary to glance at his relations to politics, in order to understand the changes that accompanied the expiration of his commission. His well-known friendship for Governor Wolf led to his being invited to write a sketch of him in 1835—after he had been something over two years on the bench—for Long-acre's *Portrait Gallery of Distinguished Americans*. In this he says: "Although Governor Wolf was a supporter of General Jackson on each of the occasions when that individual was before the American people for the distinguished station of President of the United States, still, there were some important measures of public policy in which he entertained opinions somewhat at variance with those of the President. Believing the United States Bank to possess a salutary influence in regulating the currency of the country, he approved and signed a resolution of the Pennsylvania Legislature in favor of re-chartering that institution. After the publication of General Jackson's celebrated *veto*, and during the progress of the electioneering campaign, some of the friends of the bank endeavored to procure from the Governor an expression of opinion adverse to the reelection of General Jackson. But Governor Wolf's opinion of the qualifications of Andrew Jackson for the presidency, at that critical period of the history of the country, did not depend upon the views entertained by the General on the bank question. Under these circumstances, the friends of the bank in Pennsylvania, in order the more effectually to reach General Jackson, at the election which was to take place in November, 1832, united with

<sup>1</sup> The letter was dated "New York, October 5, 1842." The note is on pp. 262-3 of Kent's Commentaries, edition of 1844, where he refers to Judge Lewis' "learned examination of the subject." Brown's *Forum* also gives the decision in full with extended comments on it in Vol. II, pp. 123-8.

<sup>2</sup> Letter of October 14, 1842.

<sup>3</sup> United States Criminal Law. Lewis, p. 24.

the Anti-Masonic and Anti-Improvement party in opposing the reelection of Governor Wolf, which took place in the October preceding. Notwithstanding this procedure on the part of the friends of the bank, Governor Wolf, on his reelection, in his first message to the Legislature, reiterated his opinions in favor of the United States Bank."<sup>1</sup>

On March 15th of the year this sketch was written, Judge Lewis, while visiting at Bethlehem, Pennsylvania, drafted a letter to Van Buren, in which he refers to a conversation they had had in '33, on the situation in Pennsylvania.<sup>2</sup> He had predicted all that had, by 1835, come to pass—namely, that Pennsylvania would ultimately favor Van Buren for President. "As one of the many humble instruments in the hands of the people," Judge Lewis continues, "I have contributed my mite to produce this result. It is a result which accords with my feelings and is sanctioned by my best judgment. Surrounded as every influential man must be with thousands of greedy office-hunters seeking their own advancement more than the public interest, it must be gratifying to receive a line occasionally from an individual who has no request to make either for himself or friends. There is no office either in the General or State government which I would accept in exchange for the one I already hold. You may therefore place my agency in the support I have given to your nomination entirely to the account of public interest. The *first* object I had in view was the nomination of Gov. Wolf. The interests of internal improvement and education required this. If Wolf is not sustained in his fearless course on these subjects the example will be dangerous and demoralizing in its influence upon all public men in time to come. The people should so act in reference to their public men as to teach and keep teaching the lesson that public men will always be sustained while they act with a firm and fearless devotion to the public interest. The *next*

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<sup>1</sup> Vol. II, closing sketch. It was not until 1873 that the authorship of this and its companion sketches were generally known. On October 29th, of that year, John Jay Smith, Esq., one of the writers, with the aid of the daughter of James B. Longacre, Mrs. John F. Keen, gave a communication to the *Philadelphia Press*, in which a nearly complete list of writers of the articles are given and the sketch of Wolf is given as the work of Judge Ellis Lewis of Williamsport.

<sup>2</sup> The introductory paragraph is given elsewhere in this volume.



object I had at heart was your nomination for President. In this I am free to say that there was nothing of *personal* feeling involved. It was a matter of principle alone. I approve the measures of General Jackson's administration and I think that you are the man most likely of all others to perpetuate and sustain them. In this view I am sincerely desirous of seeing you elevated to the Presidency and have no doubt of your ability to do honor to the station.

"Your nomination has been made by 83 delegates who were sincerely and truly the friends of Gov. Wolf—67 would have been sufficient to make the nomination in a convention of 133, but 83 united in the measure. Those who claim to be your *exclusive* friends—who say they enjoy your *exclusive* confidence—did not participate in the nomination. The nomination was made by men attached to *union & harmony*—men who are sincere in their determination to sustain both candidates named. Why ought there to be any further discord between your friends & those of Gov. Wolf? Thus far the discord may have answered one good purpose. *I will not say that it has not aided me in bringing about the result I had in view before I left home. But I am certain that every step it progresses further will produce utter ruin, so far as our national politics are concerned.*<sup>1</sup> It can do no good—it must do harm. You know that there has arisen a mutual distrust between the friends of the State administration and those claiming to be your exclusive friends. This distrust ought to cease—and the evidences of it ought to be no longer furnished by either party to the other. The officers of the general government (with one exception \* \* \* ) and the applicants for office to that government, whenever they acted as delegates at the late convention, acted against Gov. Wolf. [Here follows mention of names and actions in detail.] \* \* \* These are only a few instances. But many more might be named. The conduct of these men is calculated to induce a belief that there is an influence at Washington hostile to the State administration. As these men profess friendship for you it is calculated to create an impression that you have some agency in their proceed-

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<sup>1</sup> What this reference is there have been no means of discovering.

ings. Every one justly or unjustly is thus made to suffer for the conduct of his friends. Do you know of any means to induce these men to unite and harmonize with the party?" The letter is marked "Not sent," which fact, however, does not affect its force as an illustration not only of the political influences of the day, but shows Judge Lewis' close touch with prevailing influences in the Democracy of Pennsylvania and his desire for the general welfare of that party. It also shows his love for the judicial life, and particularly the post he then occupied.

Seven years later, when David R. Porter was Governor by virtue of this united Democracy, Ingham, the one-time Secretary of the Treasury under Jackson, issued a pamphlet which contained an attack on Judge Lewis. Just why there should be such an attack at this time, November 8, 1842, near the expiration of Judge Lewis' term, does not seem clear, unless Judge Lewis' name was being considered in Washington for some national position. Governor Porter in a letter of above date to Judge Lewis, says: "Soon after the conversation we had last spring about affairs at Washington, I ascertained enough to satisfy myself that no change was seriously thought of; and subsequent events have gone far to confirm that opinion. And I tell you now that if any change be made at all, there will be but one; and in that event Cushing will come into the War Department or probably the Treasury. In this I think I cannot be mistaken. So do not give it another thought." He then compliments Judge Lewis on his "address to [on?] the Hero of the Thames"—no other note of which has been found—and then devotes the rest of his letter to the Ingham pamphlet (a part of the letter already quoted on page 76), saying, among other things, "I think you ought to give him a skinning, and a severe one." Whatever else the incident may or may not show, it serves to illustrate the consideration which Governor Porter and the Democracy of Pennsylvania had for the President Judge of the Eighth Judicial District, the expiration of whose term of service was now so near at hand.

## CHAPTER IX

### HIS PRESIDENT-JUDGESHIP OF THE LANCASTER DISTRICT AND HIS AUTHORSHIP OF "AN ABRIDGMENT OF THE CRIMINAL LAW OF THE UNITED STATES," TO SUPPLEMENT "KENT'S COMMENTARIES." MEDICAL JURISPRUDENCE

1843

During 1842 it was evident that the Democracy of Pennsylvania intended to honor President Judge Lewis, of Williamsport, and those who feared his power in that party's counsels began to attack him. Chief among these was Jackson's late Secretary of the Treasury, Hon. Samuel D. Ingham, whose plans Lewis had defeated in Bradford County, as Governor Porter's letter, before referred to, has stated. Mr. Ingham had tried to interpret Judge Lewis' interest in the banking laws of 1840 and his presence in Harrisburg as reflecting on the Judge's honor.<sup>1</sup> The only reply to this made by Judge Lewis was his request, on August 18, 1842, of Thomas Chambers, Esq., of the Montour Iron Works, on whose alleged statements Ingham based his charges, for a signed statement such as he would be willing to swear to should it be required. In this statement Mr. Chambers absolutely denied Ingham's charges, and Judge Lewis gave the two letters to the public. Thereupon Ingham got out a pamphlet at his own cost and tried most ingeniously to make his case, with the result that Governor Porter thought he deserved the "skinning" which Lewis ought to execute.<sup>2</sup> The Judge, how-

<sup>1</sup> The suspension of specie payments by the banks of Pennsylvania and the movement in the Legislature of 1840 to compel resumption at some wisely agreed upon time was a matter that enlisted the personal interest of every citizen and was one upon which a variety of opinion existed. So far as can be learned Judge Lewis and Governor Porter were at one in opinion as to a wise medium course.

<sup>2</sup> The only copy of this pamphlet which the author has been able to find is in the Ridgway Library, Philadelphia. On May 28, 1844, other efforts of Mr. Ingham's friends were made because, according to a letter of Ingham's of June 3d following—now at the Historical Society among the Buchanan Papers—Lewis was a candidate for the vacancy on the National Supreme

ever, considered it a closed incident, and his party was more than ever determined to honor him.

It was about this time that Hon. Benjamin Champneys, President Judge of the Second District, embracing Lancaster County, resigned in order to be a candidate for the State Senate, and as the Second District was the most important outside of Philadelphia and Pittsburgh, Governor Porter on January 5, 1843, nominated Judge Lewis as successor to Judge, now Senator, Champneys, and the latter gentleman so desired Lewis as his successor that he made a motion to waive the rules on January 6th, and consent to the nomination.<sup>1</sup> Some obstructives objected, however, and it was delayed, but on the same day, when the nominations for the United States Senate were made for successor to Senator James Buchanan, Judge Lewis' name was presented by Senator Kidder for this high office also. Lewis' name was withdrawn the next day, however, and soon afterwards Senator Buchanan was made his own successor.<sup>2</sup> On the 14th of January the little group of obstructives in the Senate attempted to prevent the nomination of Lewis and compel him to still further reply to Ingham, but by a vote of 25 to 4 Judge Lewis was confirmed as President Judge of the Second District and resigned from his old post, the term of which was about to expire.

One of those who opposed him in the Senate was Senator Darsie, of Pittsburgh, who, on January 23rd, made a motion that looked much like a determination to follow his defeat by further efforts at persecution. This was an effort to have the special "District Court" at Lancaster merged into the regular Second District, but it also failed. This "District Court," technically so-called, was a relief court, like similar ones in Philadelphia and Pittsburgh, and had been established in Lancaster so early as 1820, when it was presided over by the learned editor of *Smith's Laws*. The court had had a varied experience, but by the act of March 11, 1840,

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Bench caused by the death of Justice Baldwin. A letter of Judge Lewis' of October 23, 1845, to Buchanan denies that he was a candidate or was making application—"The office is entirely too exalted to be sought for by any such process," he adds.

<sup>1</sup> The custom of appointing a judge without regard to his residence seems rather startling to the present generation, but dissatisfaction with it was of comparatively slow growth, and a change came only with a vital change in judicial constitution.

<sup>2</sup> The *Public Ledger*, January 9, 1843. Also Senate Journal for that year.

it was re-established for ten years, and its Presiding Judge was Hon. Alexander Hayes. To have abolished this court would have thrown on Judge Lewis' shoulders, as President Judge of the regular Common Pleas Court of the Second District, the burden of the entire business of Lancaster County. And this was a serious matter—especially at this time, for, omitting Philadelphia and Pittsburgh, the business of the Lancaster judiciary was the greatest in the State.

Fortunately, an analysis of the business of the courts of the counties of Pennsylvania has been made for nearly the exact decade during which Judge Lewis sat on the Second District bench.<sup>1</sup> In the mere matter of number of days in jury trials, which covered 90, and other trials, which covered 92, a total of 182 days of court, no county in the State, except the metropolis of the east and the west, compared with Lancaster. Chester came the nearest, with 106 days. Criminal cases were not so numerous in the Second District, there being but 120, but only Montgomery and Erie had more. The list of civil cases was tremendous, however, going far beyond all counties—always omitting Philadelphia and Pittsburgh—the number reaching 720, the nearest approach to this being 400 in Lycoming County, from which Judge Lewis had been transferred. What is more, 480 of the 720 cases were tried, and only two other counties had tried so many as 100, these two, Northumberland and Montgomery, having but 141 and 140 respectively. The cases continued were  $33\frac{1}{3}$  per cent. of the cases tried—a record equalled by but one other county, while but four others had a smaller proportion. It will be well to remember in this connection that in 1850 Lancaster County had a population of 99,003, with a total assessed valuation of \$721,774, the only other county approaching it (omitting the two with largest cities) being Berks, with 77,176 people, with no other one containing so many as 75,000, while in assessments Lancaster was the only one quoted above \$525,000. But with all this extensive business in Lancaster County, Judge Lewis had handled his share of it for six years with such care and dispatch that, on February 5, 1849, the

<sup>1</sup> Report to the Legislature on the judiciary for 1841 to 1850, omitting Philadelphia and Pittsburgh.



JUDGE ELLIS LEWIS  
Silhouette made at Saratoga in 1843.  
in possession of the Historical Collection of the  
Pennsylvania Bar Association, Philadelphia





special "District Court" was abolished and the business turned over to the court presided over by Judge Lewis.

For the six years previous to this consolidation, few appeals were made from the Common Pleas Court of Lancaster County. There was but one in 1843, and that was affirmed, and the two in '44 furnished both an affirmation and reversal. The reversals in '45 were two with one affirmation, while 1846 furnished three to two; but 1847 balanced this by five affirmations and but two reversals. In 1848 there were four appeals with but one affirmation. With the consolidation in 1849 there was a great increase in appeals, the number reaching nine in that year, although six of these were affirmed; while in 1850 there were eleven, seven of which were affirmed. A few that went over into 1852 gave three reversals and two affirmations—all of which was a most creditable record.

In the first of these cases, the Supreme Court did him the honor to say that "the reasons given for the opinion of the Common Pleas are so full to the purpose, and in such entire accordance with the sentiments of this court, that nothing material remains to be added," and they use it in full. "The claim," says Judge Lewis in his opinion, "is a strictly legal one, or it is nothing. 'It is without a particle of equity.' It might also be said that it is against equity, as it is certainly against the common feelings of natural justice that the real estate of the wife should be taken from her mother and brothers and given to those who are strangers to her family. The husband's representatives depend entirely on a legal claim under the date of 1832. This they have failed to establish, as the paper was not filed, nor any order obtained awarding the money to the husband until after the rights of the defendants as heirs of the wife had vested."<sup>1</sup> In most of these cases the matter was largely technical, and are sufficiently known to the legal reader. One case in 1849, an instance of a husband's will diverting property in case the wife married again, roused the Judge to an interesting expression on the preservation of the human species, although his decision was not sustained by the Supreme Court, whose opinion was

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<sup>1</sup> 5 Watts & Sergeant, 504.

expressed by Chief Justice Gibson.<sup>1</sup> Another case bearing on this field, a medico-legal case, was of such interest that the distinguished physician, Dr. Washington L. Atlee, sent the decision to the American Journal of the Medical Sciences, Philadelphia, and it appeared with one other in the October number, 1846.<sup>2</sup> Another opinion that was more widely published was one which has a most interesting expression in it on declaration of unconstitutionality of an act by a court.<sup>3</sup> "This opinion," says Judge Lewis in closing, "is of course confined to the case before the court. It is presumed that the legislature did not intend the general expressions of the act of 1842 to operate upon mortgages executed before its passage. There is ample scope for the operation of the law upon cases subsequently arising, and upon cases where there was no specific pledge of property by contract. As the members of the legislature are under oath to support the constitution, it is the duty of the court to reconcile their acts with that instrument if possible. It is not every general expression in a legislative act that should be construed into a violation of the constitution. But if the act of 1842 was intended to operate upon cases like the one before the court, it is our duty to obey the constitutional mandate of the people, in opposition to the unauthorized acts of their servants. So far as the law may be understood to operate upon mortgages executed and recorded before its passage, it is unconstitutional and void." The Baltimore *Patriot* of March 5, 1845, in reprinting the decision, says: "It is gratifying to perceive that there are men in good old Pennsylvania determined to shake off repudiation in any form. When we see a judge rising above the influences by which he is surrounded, and fearlessly casting the shield of the constitution over the rights of the humblest citizen, as a protection against the encroachments of power, we feel a renewed confidence in the stability of our government, and in the

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<sup>1</sup> 10 Barr, 352-3.

<sup>2</sup> Commonwealth vs. Hoover.

<sup>3</sup> Lancaster Savings' Institution vs. Reigart, April term, 1844. This was published in the *Pennsylvania Law Journal*, well-known to lawyers, and in various metropolitan dailies. Counsel for the defendant in this case was Thaddeus Stevens. This decision was all the more notable because it was against the Supreme Court of the State, but sustained by that of the Nation. *Democratic Review*, 1847, p. 361.

security of our liberties. We may add that the high legal reputation enjoyed by the author of this decision is a guaranty for the soundness of its law, no less than for its conformity to the received notions of equal and exact justice between man and man."

During his judicial career in Lancaster many of Judge Lewis' opinions were published. During his last year at Williamsport, Messrs. Wallace and David, at Philadelphia, began the issue of the *Pennsylvania Law Journal*, when they were able to say: "We are aware of but one publication which may be called a law magazine in the United States. We refer to the United States Law Reporter," and later explained that they did not mention the *American Jurist* because it was more of the nature of a review than a magazine. In this Judge Lewis' decision on the Rev. Wm. S. Hall case was published, together with Chancellor Kent's letter regarding it, and from that time on his opinions frequently, indeed almost regularly, appeared in that journal, to which he gave much counsel in an editorial way.<sup>1</sup> In 1845 a well-known law publisher in Harrisburg sought his services as an editor of a "New Library of Law and Equity," since well-known to the profession, the board of editors embracing Francis J. Troubat, Esq., of Philadelphia; Hon. Ellis Lewis, of Lancaster, and Wilson McCandless, Esq., of Pittsburgh. This continued most of the rest of his career in the Second District.<sup>2</sup>

During 1845, too, he delivered a eulogy at the death of Andrew Jackson, which has some interesting expressions. The address was given at the request of a large committee of arrangements, among whom was Thaddeus Stevens, and delivered in the Lutheran Church on June 26th. He begins by noting the general good feeling for Jackson, without regard to party, and, said he, for the purpose of doing him honor, "all have united in selecting to address you, on this melancholy occasion, an early but a humble friend of the deceased—one who has generally approved of his public acts—who has participated in the hospitalities of his house and table—who has loved him for his private virtues—and who can

<sup>1</sup> David Webster, Esq., one of the proprietors of the *Journal* soon after its establishment, relates this. See *Legal Gazette*, Vol. 3, p. 93.

<sup>2</sup> Vol. XV, the last, was issued in 1849.

personally bear testimony to the deep humility of his Christian devotions, in the period of his highest earthly exaltation." The address is replete with tender feeling and portrays the side of Jackson which won affection as much as anything ever written on that soldier-statesman. One other extract on Jackson's financial fight may be given: "An immense money corporation had been created by Congress, with its branches extending into every part of the Union. He believed it was mismanaging the funds of the nation—interfering with the freedom of election—controlling the operations of government—and dangerous to the liberties of the people. Good men and wise men have differed on the question how far this opinion was correct. But all sound-judging men will admit that, so long as the President entertained that opinion, the duty of his station required that he should use all the efforts in his power to save the funds and the liberties of the people from threatened danger. Accordingly, he decided that its connection with the government should be dissolved, and that, so far as depended upon him, its charter should not be renewed. The political warfare which followed was as fearful as any he had ever encountered in arms."<sup>1</sup>

"Among the many efforts," wrote Chief Justice Taney, in acknowledging the receipt of a copy of this Jackson address, "which have been made since the death of Genl. Jackson to do justice to his memory, I have seen none more happy than the Eulogium delivered by you. It was his fortune on several occasions to be placed in situations of great difficulty and responsibility—and his acts therefore speak for him, and enable us to understand his true character far better than by a labored analysis of the high qualities for which he was distinguished. You have judiciously selected the leading incidents of his life—those which most strikingly marked his character—and in a few words pointed out the virtues they displayed. I read with particular pleasure the passage in relation to his refusal to disband at Natchez the volunteers who had rallied at his call and followed him from Tennessee. This has always appeared to me to be one of the noblest actions of his

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<sup>1</sup> A copy of the address is at the Historical Society of Pennsylvania.

life, in which he put to hazzard his character and standing as a military officer with the government—and subjected himself to the danger of the heaviest punishment, rather than be made the instrument of committing an act of injustice and oppression. The act is the more worthy of commemoration, when he thus took upon himself the high responsibility of protecting those gallant and pathetic men from the cruel and heartless order which had been issued at Washington, he was but little known to the great body of the people of the U. States, and had not that high and commanding confidence and influence to support him which he afterwards so justly and worthily obtained.

"Perhaps," he continues, "no topic was more difficult to manage upon such an occasion than that of the Bank, as you were addressing an assembly composed of men of all parties, many of whom were yet sore from the recollections of that violent and protracted conflict—and some of them perhaps the more sensitive from misgivings arising, from subsequent events, that Genl. Jackson might have been right and they in the wrong. This difficult point is I think very happily touched upon and disposed of. Yet I am persuaded that the time cannot be distant when the honest and patriotic men of all parties will, with one accord, do justice to the men concerned in that measure; and will admit the overthrow of *the monster* was the greatest of all the great public services of Genl. Jackson; and that nothing but the removal of the deposits could have secured the victory. So I thought when I first advised that measure, and also when I afterwards carried it into execution—and subsequent events have confirmed that opinion. For it is now evident from the immense power displayed by the Bank in that conflict that it would have been too powerful for the government under almost any other chief; and if the deposits had not been removed and the decisive conflict thereby brought on during the administration of Genl. Jackson, the Bank would have been rechartered in spite of his successor—or rather no one could have been elected to succeed him who was not devoted to the Bank—and that corporation would at this day have been virtually governing the country;—



corrupting its councils—and directing the operations of the government as might best suit the cupidity or ambition of those at the head of the corporation.

"Accept my cordial thanks," he adds, "for the kind terms used in your letter. I have always remembered the commencement of our acquaintance with great pleasure and your course since that time has been too elevated and honorable to yourself to allow any one who had known you to forget you; and it has given me much pleasure to witness the marks of public respect and confidence which you have received on all hands to have been so justly and deservedly bestowed.

"With great respect & regard

"I am Dr. Sir your friend & Servt.,

"R. B. TANNEY."<sup>1</sup>

That so learned a judge should be in a college town and not to be thought of as a Professor of Law was hardly within the realm of probability. Franklin College, which dated back almost to the Revolution, had had a varied experience, but during the "40's" was in a condition sufficiently prosperous to be called a revival. This was some half-dozen years before its union with Marshall College. During the summer of 1846, several members of the bar of Lancaster petitioned the trustees of Franklin College to establish a professorship of Law and Medical Jurisprudence, for which they evidently had in mind this President Judge. The board had no funds to go to additional expense regarding it, but favored the plan with that exception, which seems to have been agreed to, and on September 7th (1846) Judge Lewis was chosen to that chair. Dr. J. H. Dubbs, the historian of the college, finds no record of the further progress of this professorship. Statements appear in several contemporary sketches which must have been known to Judge Lewis himself, which state that he did fill the chair for a time at least. A letter from Hon. James Buchanan, then Secretary of State at Washington, dated January 14, 1847, after saying that he "shall ever feel proud to have been a member of the bar of Lancaster," says: "I rejoice that you have determined to devote your time and talents to the instruction of

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<sup>1</sup> Dated October 25, 1845, Baltimore. Lewis Papers.

young gentlemen destined for the profession. In no other sphere can you be more useful; & with your well known energy in whatever you undertake, you cannot fail to prove successful. The provision of the charter of the Franklin College vacating the seats of those trustees who have ceased to reside in the state for the period of a year would, in my opinion, deprive me of this office. It is most certain that I intend to return to the State & to lay my bones in my native earth should God spare my life; but it can hardly be said, with any regard to the fact, that I now reside in Pennsylvania. I have not lost my citizenship, but surely I now reside in this 'city.'<sup>1</sup> In April, 1847, following, the *Democratic Review*, of New York, states that "Judge Lewis also discharges the duties of professor of law and medical jurisprudence in Franklin College, one of the oldest endowed institutions in the State."<sup>2</sup> It may have been these duties which prevented him attending the Democratic National Convention at Baltimore to which he was chosen a delegate; for he did not attend the convention which nominated Lewis Cass, of Michigan, for the Presidency, and was prevented by some unknown circumstances.<sup>3</sup>

Whether his law instruction or his editorial experiences suggested his next and most extensive literary work is not known; it is known, however, that both of these as well as his judicial work led to a warm friendship with the aged author of Kent's "Commentaries on American Law." The latter work, it will be recalled, was, like Blackstone's, revised law lectures, given in Columbia College, the first volume appearing in 1826 and the fourth and last in 1830. In the latter volume, Chancellor Kent, speaking of fields his work does not attempt to cover, says: "The law of crimes and punishments is, no doubt, a very important part of our legal system, but this is a code that rests in each state upon an exact knowledge of local law; and, since the institu-

<sup>1</sup> Lewis Papers. He devotes a page to the legal aspects of the question and asks Lewis' advice as to whether there is a difference between "inhabitant" and "resident." The letter is in reply to one of January 7, 1847, dated "Franklin College, Lancaster." On the 16th Judge Lewis writes a most interesting opinion on the "resident" question, claiming Buchanan's residence still in Lancaster.

<sup>2</sup> Vol. XX, p. 359. David Paul Brown in his *Forum* sketch years later confirms it also.

<sup>3</sup> *Ibid.*, p. 363.

tion of the penitentiary system, and the almost total abolition of corporal punishment, it has become quite simple in its principles, and concise and uniform in its details. Our criminal codes bear no kind of comparison with the complex and appalling catalogue of crimes and punishments which, in England, constitute the basis of the system of the pleas of the crown."<sup>1</sup> Just when it was that Judge Lewis first began to think of this field of the criminal law as one needing a treatise is not known, but, in all probability, Chancellor Kent himself personally suggested his undertaking it. In a copy of a letter by Judge Lewis to the aged Chancellor, dated October 15, 1847, the Judge says: "In the course of conversation last spring, you were kind enough to favor the project of writing a volume on the Crim. Law of the U. S. upon the plan of your Commentaries and to accompany them, as a fifth volume, upon a branch of jurisprudence not covered by them."<sup>2</sup> What the aged jurist thought of Lewis is stated well in a letter of April 18, 1846, where he says: "Everything that I have seen from your judicial pen denotes research, accuracy and judgment. \* \* \* I am induced to drop this line by the pleasure of bringing you before me and to assure you of my great respect and regard. You are aware that I am *very far* advanced in life, and by the kindness of Providence I am in good and active health, with my hearing considerably impaired, but my relish and ardor for studies and legal learning continue unabated and I have the blessing of good eyes. Without meddling actively in political concerns I am an observer of what passes and with lively sensibility. Yours most truly, James Kent."<sup>3</sup> Late in 1847, however, the great jurist was in rapid decline, at the age of eighty-four years, and Judge Lewis, with a modest estimate of his book, which was ready for dedication on October 1st, merely issued the work with a dedication to Chancellor Kent, who was even then passing through his last sufferings.

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<sup>1</sup> Vol. IV, p. 528. It is curious to note that Lewis puts on his title-page, not Kent's reference to this field, but Blackstone's, which says it "is of the utmost importance to EVERY INDIVIDUAL IN THE STATE."

<sup>2</sup> Lewis Papers.

<sup>3</sup> Judge Lewis has engrossed this letter as a copy, stating that he sent the original to James Buchanan.

"To the Hon. James Kent," reads the dedicatory note to "An Abridgment of the Criminal Law of the United States." etc., "by Ellis Lewis, President of the Second Judicial District of Pennsylvania." "As a very humble but sincere admirer, I desire to commit this imperfect production to the public under the shadow of your great name. In doing so, I acknowledge my gratitude for the friendly counsels with which you have cheered me in the performance of difficult and responsible duties—my respect for the patience, politeness, and pureness of heart, by which you have won the affection of all, and presented to the world an illustrious example as a Presiding Magistrate in the highest tribunals of Law and Equity—and finally my veneration for those exalted abilities which have been the great ornament of the common law, and the shining light of the Chancery jurisdictions in this country. Purity and temperance have secured to you length of days; and a habit of industry has rendered your long life a blessing to every State and Nation which acknowledges the common law as its rule of decision. Your labors have commanded the applause of the present generation, and shall excite the admiration and gratitude of future ages. In your lofty solitude, may the consolations of a well spent life render the evening of your career as happy as its mid-day has been useful and brilliant. Your Very Sincere Friend, Ellis Lewis. Lancaster, Pa., October 1st, 1847."

This note had been submitted to Chancellor Kent for his consent, and on November 9th he replied, saying: "My extreme sickness has confined me to my home and reduced me to a skeleton, & that must be my apology for delay in acknowledging your very friendly letter of the 15th ult. \* \* \* \* \* I have read your proposed dedication. It is far too highly complimentary, but it is a beautiful composition & I shall be your great Debtor for the honourable & candid commendation you have been pleased to [not plain]." Within two weeks the work appeared, and on the 22nd of November—almost exactly three weeks before his death—he wrote: "I have had the pleasure of receiving your great work on the *Criminal Law of the U. States*; but I have not been able to examine it as I ought, for I am so unwell &

weak as hardly to get up & hold a pen. You must excuse me from making any further observations on the work at present. I am with affectionate Regard, yours &c. James Kent." He died on the 12th of the next month, and in reply to a letter of condolence, his son, William Kent, wrote Judge Lewis: "I am truly grateful to you for your kind and feeling letter. Nor can I adequately thank you for the beautiful dedication of your late work on Criminal Law. My poor father, though racked with pain, read it with delight. He placed your letter accompanying it, on his table, but a long time elapsed before he could answer. It was an affecting sight, when he tottered to his table, & though absolutely gasping with pain, wrote you a few lines in reply. I believe it was the last letter he ever wrote."<sup>1</sup> The volume was reviewed in the *Pennsylvania Law Journal* of January, 1848, in a discriminating way, showing both its excellence and its defects, but with the conclusion that "Wherever in the United States criminal law is practiced, the *United States Criminal Law* must find its way," and it did. The reviewer also says: "We understand that for a number of years Judge Lewis has devoted himself to the study of criminal law, and the result of his labors has been the work before us."<sup>2</sup>

His learning and character had made him, by this time, one of the best known of Pennsylvania jurists, and one or two institutions of learning took occasion to recognize it at their commencements in the spring of 1848. Transylvania University at Lexington, Kentucky, the oldest institution of the West, since become Kentucky University, conferred upon him the degree of Doctor of Laws, and the Philadelphia College of Medicine, in recognition of his learning in the realm of medical jurisprudence, bestowed upon him the honorary degree of Doctor of Medicine.<sup>3</sup>

<sup>1</sup> Lewis Papers, in possession of Miss Josephine Lewis, Philadelphia.

<sup>2</sup> *Pennsylvania Law Journal*, 1848, pp. 154-5. Wharton's *Criminal Law of the United States* was issued in 1846, and successive editions were issued from time to time and revised by the author. So far as is known, but one edition of Lewis' work was issued.

<sup>3</sup> *Pennsylvania Law Journal*, October, 1848, p. 191, quoting the *Lexington Atlas*, the *Lancaster Tribune* and the *Philadelphia Bulletin*. Jefferson College also gave him the degree of Doctor of Laws. James S. Green, Professor of Law in Princeton College, nominated him for the same degree in that institution shortly after Lewis heard of the Transylvania degree. The Judge was not certain whether he should accept more than one, and on August 31, 1848, wrote his friend Buchanan to have Mr. Green withdraw the nomination at



With the appearance of these honors, the April number of *The United States Magazine and Democratic Review*, of New York, which was then running an illustrated series of "Political Portraits with Pen and Pencil," had the most able and extended sketch of Judge Lewis that had so far appeared. The frontispiece of the issue was a portrait of Judge Lewis, a mezzotint engraving by Doney from a daguerreotype by Plumbe, which is here reproduced. "One trait in his character," says the sketch, "is too honorable to be here overlooked. Himself emphatically one of the people—sprung from their midst, and sympathizing with their feelings and wants—Ellis Lewis has ever been the fast friend of the people. Whether we scan his actions as advocate, legislator or judge, the result is the same. We behold him the same fearless and able defender of the rights and interests of the masses. In this he seems to have been bent on loyalty to the stern teachings of his own early struggles, and to have kept constantly before him, as worthy models, those great republican lawyers of the English commonwealth, and of our own colonial and revolutionary era, who were on all occasions the most devoted, as their great intellects and better training constituted them the most able friends of liberty."<sup>1</sup>

Notwithstanding his judicial, educational and literary occupation at this date, he was a silent but considerable force in the democratic powers of both State and Nation, and his counsels were often availed of, and frequently well-known to leaders of that political party. Probably no better expression of his beliefs on the vital questions of that day exist than that in a letter to Vice-President Dallas, during the autumn of this year, 1847. "As one of the old-fashioned democrats, still adhering to the ancient faith," it reads, under date of October 7th, "I rejoice to perceive from your Pittsburgh speech that your long tried democratic principles have not been extinguished by the *centralism* which has so long been at war with the rights of the States. There was a time when a *strict construction of the Federal Constitution* was the great principle which distinguished the democratic party

Princeton. Jefferson College, however, seems to have done so without his knowledge. Buchanan Papers at the Historical Society of Pennsylvania.

<sup>1</sup> Vol. XX, p. 360.



from those whose licentious construction of that instrument gave to the federal authorities almost unrestrained power over all our social and political rights. 'Power is continually stealing from the *many* to the few.' 'The price of liberty is eternal vigilance,' and it behooves the friends of state rights to be constant in their watchfulness of the insidious approach of *consolidation*. So long as the sons of Pennsylvania shall be VIRTUOUS they will be careful of her LIBERTY and independence.

"At one time," he continues, "we were told that the States have no right to pass laws in favor of surrendering fugitive slaves to their masters. The whirlwinds of *abolition* and the storms of slavery, lulled by the beguiling zephyrs of *compromise*, unite in a gentle breeze which waft[s] to the free states of the Union the new dogma of federalism that the general government has exclusive cognizance of surrendering fugitive slaves, not because it is so 'nominated in the bond' of union, but because the States are presumed to be too dishonest to fulfill their constitutional obligations on a subject of so much delicacy. And as soon as one of the greatest states of the Union, mortified at the usurpations of her rights, withdraws all her legislation from the subject, in obedience to the insulting dogma, and prohibits her officers from all interference in such cases, the riot, and bloodshed, and murder to be expected from such a heresy, followed as a natural consequence; and then we are told that a state has no right to prohibit her own officers from accepting *legislative commissions* from Congress! There was a time when it was conceded by all who understood our institutions that Congress had no powers whatever except those expressly granted, or those absolutely necessary to the exercise of powers thus clearly conferred. But now although no power was ever given by [to?] Congress to interfere with the domestic institutions of the States, political heresies are constantly springing up in quarters so intelligent as to command our entire respect, and so influential as to create the most serious alarm. In one part of the Union we hear it said that the principles of the Ordinance of 1787 (Northern Territory) may be enforced upon new states by the National Legislature. In another section where such

claring invasion of the rights of the states would, under ordinary circumstances be repudiated with indignation, the doctrine is to some extent received with favor under the name of a *compromise* by which the constitution shall be construed to authorize such federal interference within certain geographical limits and to exclude it from other portions of the Union. Thus a great *constitutional* question becomes a *geographical* one and the constitution itself becomes a *nose of wax* or a *face of dough*, to be moulded into every desirable form as geographical position may require.

"I protest against this false system of Hermeneutics. The clause which confers *certain powers* for the purpose of providing for the 'general welfare' has been occasionally claimed to authorize the exercise of *every other power* which Congress might deem necessary to promote that object. But if this be tolerated there is no limit to the powers of the federal government, and there is an end to State sovereignty. Such a licentious construction was attempted in France when the authority to 'watch over the safety of the State' was construed as justifying the annihilation of another clause which 'guaranteed the liberty of the press.' But the memorable 'three days' in July, 1830, overturned this construction and drove its authors from power. God grant that the centralizing influence in our country may never be carried to an extent so absurd, or require a remedy so terrible.

"Under our constitution the States of the Union are upon terms of entire equality. There is not one rule for States lying south of  $36^{\circ} 30'$  and another for those north of that line. The constitution furnishes the same rule for all. Every State has a right to insist on three-fifths of her slave population being taken into the calculation apportioning her representation in Congress. This may seem a hard-ship upon those who do not choose to hold slaves, but the right is distinctly granted and is granted to all alike. There is a perfect equality. All may claim its advantages, if disposed. But I trust that the day will be far distant when Pennsylvania shall desire to be restored to those advantages. By her own voluntary act she put them away from her as neither

consistent with her interests or her sense of justice. When other states can with equal safety imitate her example, they will doubtless do so. But until that time shall arrive, what authority has the general government to interfere with their domestic rights? Where in the constitution has the power been granted to Congress to control the States in this respect? The *territories* which belong to the nation are of course under national legislation. Of the extent to which this may be rightfully exercised it is not my purpose now to speak. But new *states* if admitted as such must necessarily be admitted upon terms of equality with the original states, because as already remarked we have but *one* constitution and it operates *equally* upon *all*. Congress has no power except what is derived from that instrument. They may admit new states, or when under no treaty stipulations they *may refuse such admission*. But they can add no conditions not *authorized* by the *constitution*. Such conditions if added may be disregarded by the states so admitted, and there is no power in the government to enforce them. A state admitted into the Union with a *Congressional restriction* upon her rights would be restored to her rights by the supreme power of the constitution itself, the moment she came into the Union and under its protection.

"The ordinance of 1787 in its terms only applied to the territory northwest of the Ohio. It never operated upon Louisiana, which was not acquired until 1803; and of course it was never intended to apply to territory to be acquired by purchase or by conquest from Mexico. Nor was it ever intended to operate upon *independent states*. The moment territories are admitted into the Union they become entitled, under the paramount law of the Constitution, to the right of legislation on this subject for themselves. In respect to Louisiana, the French government had a right at the time of cession to secure to her citizens then inhabiting the territory the right of admission into the Union upon an equality with the citizens of the original states; it was not only the right of France to make this provision, but she was careful to exercise that right. And we were accordingly bound by our treaty with France to admit the inhabitants

of the ceded territory 'as soon as possible' to 'all the rights, advantages and immunities of citizens of the United States,' not according to such congressional restrictions as may be thought proper, but 'according to the principles of the Federal Constitution.' Our failure to fulfill this obligation would be a breach of integrity, a violation of good faith and a just cause of war on the part of France. So long as we are bound by the constitution or regard our treaty stipulation with France, neither the Wilmot Proviso nor the principles of the Missouri Compromise can ever be extended to any portion of the territory which constituted a part of Louisiana in 1803. *Missouri*, although north of the alleged compromise line, was admitted with all her slavery clauses in her constitution. *Iowa*, although in like manner north of the [line], was also admitted without any restriction upon her right to hold slaves. *Texas*, although including territory on *both sides* of the alleged line of compromise, was admitted without the slightest restriction upon her right to hold slaves in *every part* of her jurisdiction. It is true that there has been some 'Buncombe' legislation accompanying the acts of admission, in the case of Missouri and Texas. It was said when Missouri was admitted that in *future cases*  $36^{\circ} 30'$  should be the division line between the free states and the slave states, but, although according to that line, Missouri should not have been allowed to hold slaves, good care was taken not to apply the compromise principle to herself. The same thing was said again when Texas was admitted, but although according to the alleged line of compromise a portion of Texas ought to have been excluded from the privilege of holding slaves, good care was taken not to apply the principle to Texas herself. In the case of Iowa the principle of the alleged compromise was disregarded without even a *promise* of its application at some other time or to some other case. In truth the restriction will never be attempted, because it is perfectly well understood that there is no power to enforce it. There never was any such compromise. The subject did not admit of compromise. There were no parties competent to make such a compromise. As for Pennsylvania it is certain that she never was a party to it. She stood out

against it to the last, and when one of her representatives (and there was only one I believe) voted for the admission of Missouri some of his constituents burnt him in effigy in order to manifest their dissent from any such compromise.

"The southern politicians are shrewd and wise. They know that all such restrictions upon state rights are nugatory and they can never be enforced against the will of a state desiring to hold slaves. They have therefore everything to gain by the compromise, but nothing to lose. Driven almost to the wall by the pressure of the abolitionists, and the advocates of the 'Wilmot Proviso,' some of them are willing to put on a grave face and talk about the principles of the Missouri Compromise! As a matter of curiosity I should like to see an old-fashioned democrat of the Ancient Dominion *when he put his countenance in order* for the purpose of addressing Northern Democrats in favor of the principles of the Missouri Compromise. I have many reasons to admire Mr. Ritchie and I imagine *his countenance must be peculiarly grave and solemn in its appearance* when he is about preparing an editorial on this subject for the Union! But the intellectual light could not all be concealed. The silver edges of the cloud would betray the sun-light behind! It is not intended to censure our southern friends for their eloquent praises of the blessings of the Missouri Compromise. By that eloquence they may succeed in getting new slave states admitted which otherwise might be excluded. But the great statesmen of the nation should look this question directly in the face. So far as regards the rights of the states we are bound by our present constitution to let the subject 'alone entirely.' When we are under no treaty obligation members of Congress may be governed by such motives as satisfy their own consciences in casting their votes on the question of admitting a new State. They may be influenced by geographical or numerical calculations, and there is no power but their own sense of justice to control them. But when their votes are once cast for admission, the question of slavery or freedom has passed out of their control. So that each case must always be decided as it arises—independ-



dent of any supposed compromise. One Congress cannot bind its successors. Each has the right to act for itself. If we desire to impose the restrictions required by the principles of the Missouri Compromise, or those of the Wilmot Proviso we can only do so by amending the constitution so as to confer the necessary power upon Congress. If this amendment should be proposed I should not be disposed to adopt the line of the Missouri Compromise or any other line until we know what territory was to be the subject of compromise or division. At present we know not the extent of territory to be acquired. It is as likely to be the whole of Mexico as a part. I perceive no other way to bring the present war to a close, than that of *entire subjugation* of a people who have wronged us by land and sea, who refuse all indemnity for the past and atonement for the future, who claim to deprive a free state of her liberty and independence, who invaded our territory and sought to hold in worse than Egyptian bondage the youngest of our confederacy; and also who, after a succession of unexampled victories on our part, as an *ultimatum* tell us that we must surrender to a weak and wicked enemy the very soil which has been rendered sacred by the blood and the graves of our brethren, and glorious by their brilliant achievements in arms."<sup>1</sup>

To this letter Vice-President Dallas replied on the 16th instant as follows: "There are some constitutional views essential to the permanency of the national democratic party:—as soon as they cease to be the basis of political action, if we do not turn federalists, we become something less honorable—mere expediency men. It refreshed me greatly to read your letter of the 7th instant, for which I heartily thank you. In return, I send you a short speech delivered by me at Hollidaysburg on the 23rd Sept. last. You will perceive that while I harmonize with the argument and great current of your letter, I do not admit the broad unqualified position that 'the territories which belong to the nation are of course under national legislation,' be the subject matter of legislation what it may. If by '*territory*' more is meant than '*land*': if it include *men*:—then as soon as

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<sup>1</sup> A contemporary copy among the Lewis Papers.



the soil becomes the property of the American People, I claim to consider the men upon it as a part of the American People, in whom certain inalienable and reserved rights exist; and I say that Congress has not been vested by the Constitution with a power to destroy arbitrarily the local and domestic rights and relation of that or any other portion of the American People. '*Compromise*,' in one aspect, is encroachment: in another aspect, it is base and unfaithful surrender:—in no aspect is it constitutional."<sup>1</sup> Evidently the repeal of the Missouri Compromise was in rapid preparation.

With the year 1848, however, came the Whig successes in nation and state, President Taylor and Governor Johnston leading in each respectively, and Judge Lewis had little occasion to consider political movements except so far as they related to the reorganization of the judiciary. On the part of those interested in reorganization an attempt was made to get a joint resolution passed to secure an elective judiciary, but it failed; on the part of the friends of the judiciary there was considerable agitation to secure an increase in their salaries. With the consolidation of the courts in Lancaster County, already mentioned, it was believed that justice demanded the increase of the salary of Judge Lewis. The latter had, late in January, 1849, come before the Legislature in a communication on the subject of capital punishment, in which he advocated the substitution of solitary imprisonment, but a Whig government was not likely to respond with great alacrity to the suggestion of so good and able a Democrat as the President of the Lancaster courts. This was all the more true since one branch of the Legislature, while content that the work of a mayor's court and the special "District" court should be thrown on the shoulders of the President of the Second District were not willing to adjust the salary to the change. Leading members of the Lancaster bar, knowing this and fearing Judge Lewis would resign, addressed him on the subject, saying, among other things: "We have heard it intimated, since the Legislature have refused to render you this act of justice, that you contemplated a resignation.

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<sup>1</sup> Lewis Papers.

We hope that such is not your resolve—that you will still preside on a bench which you have adorned with so much learning and ability, until another effort can be made to have justice done both unto yourself and unto those whom you have so well, and truly, and faithfully served.”<sup>1</sup>

“Gentlemen”: replied Judge Lewis on the 1st of February (1849), “your communication relative to the judicial business of this District has been received, and I return the most heartfelt acknowledgments for its expressions of regard and of approbation of the manner in which my official duties have been discharged. Coming from individuals whose education and pursuits render them the most competent judges—springing spontaneously from all parties—from the mature judgment of experienced age, and from the fresh hearts of vigorous youth—from men heretofore distinguished by exalted official stations, and from others who are deservedly reaping a rich harvest in the field of professional labor, such a testimony is the highest reward, next to an approving conscience, which a public servant can receive upon earth. Prizing your favorable judgment thus highly, and regarding it as representing the kindness and confidence which have ever been extended to me by the upright and intelligent citizens of Lancaster County, it will be my constant endeavor to deserve its continuance.

“The proposition to repeal two other Courts, of nearly thirty years’ standing, and to require from the Judges of the Common Pleas, *without any provision whatever for compensation*, the performance of onerous duties which have heretofore been valued and paid for by the State at \$2600 per annum, is so unjust in its operation, and so startling in the principle involved, as to preclude all hesitation in regard to the course to be pursued. The hardship and injustice of this proposition is the more apparent when it is stated that although I consented to accept the office which I now hold in consideration that the salary was \$2000 per annum, yet a great portion of this sum has been withheld for six years and only the small sum of \$1600 per annum actually appropriated, for

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<sup>1</sup> The names signed to this paper included forty of the ablest members of the bar. *The Pennsylvanian*, May 11, 1849, reprinted from the *Lancasterian*.

discharging the laborious duties of the President of the Common Pleas—of the Orphans' Court—of the Register's Court—and of the Court of Quarter Sessions, and Oyer and Terminer, for the large and populous county of Lancaster. The inadequate compensation provided for judicial services throughout the State, and particularly for those rendered by the Judges of the Supreme Court, has been lamented by the wisest and purest men in the Commonwealth, as tending to deprive the public of the services of the most competent officers. But the question presented in this district is *whether the constitutional provision respecting compensation may be entirely abrogated by the imposition of new and enormous labors, without any compensation whatever. If this may be done the Judges may be indirectly legislated out of office, whenever a change of parties may offer a temptation to the eager expectants of patronage.*

“The great feature of our government is the distinct recognition of three co-ordinate and independent departments, intended to operate as checks upon each other. The rights of life, liberty, and property depend, in an especial manner, upon preserving the independence of the Judicial Department. It was not for the benefit of the Judges, but for the higher purpose of enabling them to protect the citizen in his rights, that the constitution threw its guards around them, and denied to the Legislature the power either to require ‘services’ without providing an ‘adequate compensation,’ or to ‘diminish’ that compensation, after it shall have been ‘fixed by law,’ either at the time of accepting the office, or when the increased duties were imposed. When new and onerous duties are required, the legislative powers may adjudicate upon the *amount* of compensation, and its judgment is necessarily conclusive; but where no such judgment is given, and no compensation whatever is provided for such increased services, there can be but one opinion among sound jurists and honest men, on the question of constitutional power. The Legislature of this free commonwealth possesses not the boasted omnipotence of the British Parliament. On the contrary, with the exception of jurisdiction over its members, each House is clothed only ‘with the powers necessary for

a branch of the Legislature of a *free* State.' Under this restriction, the law-making power is not authorized to perpetrate a manifest wrong—or to reduce to slavish dependence upon its will a co-ordinate branch of the government, by imposing enormous labors without compensation. It cannot abolish existing tribunals, without providing others to give 'remedy by due course of law;' nor can it throw obstructions in the stream of that 'justice,' which the courts cannot arrest, and which the Legislature can neither 'deny or delay.' There is no power in a 'free' government to produce such a state of anarchy and injustice.

"The comity due from one department to another will always induce a postponement or waiver of questions of this nature, when there is nothing intolerable in the burthens imposed, and nothing indicating danger to the constitutional authority of the Judiciary; and, consequently, to the rights of the people. But when these are threatened, there is no course left but that of a faithful and firm adherence to the paramount law. The Judge who clings to office with such tenacity as to shrink from his high duty in this respect, disgraces himself, dishonors the Bench, and is totally unworthy the confidence of an enlightened people. Entertaining these views, and having my ambition abundantly gratified by the marks of public confidence already received, it was my wish to make room, at once, for some one who might be willing to accept the burthens proposed to be imposed, and thus to dispose of the constitutional question and avoid, at the same time, the public embarrassment which may contingently arise. But, in obedience to the kind wishes of the Bar, I shall remain at my post, and *shall, as ever, do my part in maintaining the independence of the Judicial Power in all its constitutional vigor.*

"Those who are familiar with legislation know how to appreciate and excuse the embarrassment and delays which occasionally occur in the actions of deliberative bodies. It is generally the result of conflicting opinions as to the proper time or proper means of accomplishing the end desired, and not the offspring of intentional wrong. I would be the last to impute to the enlightened representatives of the people a desire to deny to the

'laborer' 'his hire,' or to disregard the plain provisions of the Constitution. If such should, however, be the result of the ultimate legislation on this subject, I have said enough to indicate that it cannot be successful, unless followed by a further outrage of sufficient magnitude to attract the attention of the people to the question. From my knowledge of the gentlemen composing the present Legislature, the belief is indulged that justice will be done in the premises, before the adjournment."<sup>1</sup> And the Legislature did so far meet the requirements indicated as to, in two clauses headed "Provided" and "And provided further," allow compensation to "the present President Judge" up to but not over two thousand dollars yearly. This was a species of compromise that permitted Judge Lewis to continue as President Judge of the Second District with its new burdens; and indeed he so distinguished himself in subduing the great mass of business that it marked him for higher honors, should the attack on the whole judiciary, which was making such quiet headway even at this time, become effective.

<sup>1</sup> Pennsylvania Laws, 1849, p. 256-7. The salaries of Judges in Pennsylvania at this period were interesting as compared with those of to-day. The Judges of the Supreme Court had, including mileage: \$4,024.67 for Chief Justice Gibson; \$3,576.06 for first Associate Rogers; the others, Justices Bell, Coulter and Burnside getting \$2,482 each. The First District (Philadelphia) judges received \$2,600 apiece, all these figures including mileage, so that those who had no travelling to do are favored ones. The districts having the next to these were those having \$2,000 salaries, or slightly over that, with mileage: Lewis' district, Woodward's district, McClure's district, Black's district, Bredin's and A. S. Wilson's. Church and Eldred had \$1,800 and over; Jones, Krause, Knox, Jessup, Williston, Gilmore, Durkee, Kidder and Taylor \$1,700 and over; and the rest were \$1,600 and over. These were the figures, as nearly as investigators at the time could compile them. *The Pennsylvanian*, February 19, 1851.





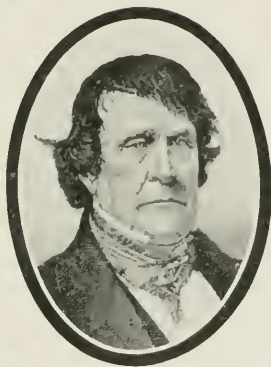
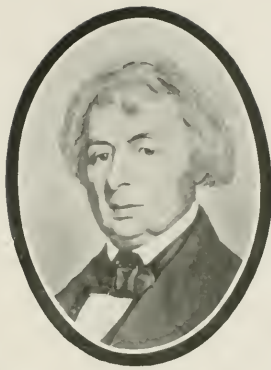
Molton C. Rogers  
From a daguerreotype in  
possession of the Misses  
Foard, Camden, N. J.

Thomas Burnside  
From a portrait of his  
early years  
in possession of  
Mrs. H. C. Valentine,  
Bellefonte, Pa.

John Bannister Gibson,  
Chief Justice,  
From a print in  
Roberts' Sketches of Gibson,  
Law Association,  
Philadelphia

Richard Coulter  
From an engraving in the  
office of the Prothonotary of the  
Supreme Court,  
Philadelphia

Thomas S. Bell  
From a photograph  
in possession of the  
Law Association,  
Philadelphia



THE LAST APPOINTIVE SUPREME COURT OF PENNSYLVANIA  
before the elective judiciary of 1850



## CHAPTER X

### POPULAR DEMAND FOR AN ELECTIVE JUDICIARY IN PENNSYLVANIA AND THE CAMPAIGN FOR THE FIRST ELECTIVE SUPREME BENCH, TO WHICH HE IS ELEVATED

1850

For more than a decade past there had been two sources of rumbling discontent so far as the judicial system was concerned, but as it had little immediate relation to the career of Judge Lewis, but slight notice of it was necessary in describing the period. The contest which produced the constitutional amendment left a feeling with the people that a limited term was not sufficient to bring the judges under full responsibility to them, while a great number of the best judges and lawyers resented the innovation as pure radicalism. Many of even the highest members of the bench were not slow to express their discontent in unmistakable terms. This smouldering element on both sides boded no good to this feature of the new constitution. Into this situation was injected another element which had been long in operation, but which political conditions intensified, namely, the custom of appointing judges to districts without regard to residence in them. There is no evidence that Judge Lewis did not believe in the measures the people had taken, and it would be in keeping with his whole career if he thoroughly approved of the restrictions of 1838; nor, in consequence, were the people other than friendly to him personally, and, although he was imported into Lancaster district, he was popular there and soon won even affection and loyalty. Such was not the case in some parts of the state, however, and especially in those counties or districts which were of a different political complexion from that of the Governor who appointed their judges, and it was at this particular part of the machinery that fric-

tion arose, so violent in character that it set the whole state aflame.

Not that the question was in any particular degree a question of judicial ability, for it was not. The twenty-four districts of Pennsylvania were presided over at this time by as able a body of law judges as ever graced the benches of the state. In the spring of 1849, when Ellis Lewis became the sole presiding judge in Lancaster County, there were in the First District, Philadelphia, Judges Edward King, Anson V. Parsons, James Campbell and William D. Kelly, and a special "District Court" bench composed of Judges George Sharswood, John King Findlay and George M. Stroud. In the Third, Northampton and Lehigh, was Judge J. Pringle Jones; in the Fourth (Centre, Clinton and Clearfield), Judge George W. Woodward; while in Allegheny, the Fifth, was Judge Benjamin Patton and a special "District Court," as in Philadelphia. Judge Gaylord Church presided in the Sixth, including Erie, Crawford and Warren; while in Montgomery and Bucks, the Seventh, was Judge David Krause. Judge Joseph B. Anthony had finally been elevated to the old Eighth District, where Judge Lewis had sat; Judge Frederick Watts presided in the Ninth, embracing Cumberland, Perry and Juniata; and Judge John C. Knox was in Westmoreland, Indiana and Armstrong. In Luzerne, Susquehanna and Wyoming was Judge William Jessup, and in the Twelfth (Dauphin and Lebanon) Judge John J. Pearson presided as the law judge. Bradford, Tioga, Potter and McKean had Judge Horace Williston, and the Fourteenth, Washington, Fayette and Greene, had Judge Samuel A. Gilmore; while in the Fifteenth (Chester and Delaware) Hon. Henry Chapman presided. The Presiding Judge in the Sixteenth (Franklin, Bedford and Somerset) was Hon. Jeremiah S. Black, while Beaver, Butler and Mercer plead their causes before Judge John Bredin, and Hon. Joseph Buffington heard them in the Eighteenth (Venango, Clarion, Jefferson, Elk and Forest). Decisions were rendered in the Nineteenth District (York and Adams) by Hon. Daniel Durkee, and by Judge Abraham S. Wilson in Mifflin and Union. Schuylkill County, as the Twenty-first District,

had Judge Luther Kidder, and Hon. Nathaniel B. Eldred presided in Monroe, Pike and Carbon. The Twenty-third and Twenty-fourth were composed respectively of Berks on the one hand and Huntingdon, Blair and Cambria on the other, with Judge David F. Gordon in Berks, and the Hon. George Taylor in the Twenty-fourth.<sup>1</sup> It was not a personal question and the real nature of it can be seen by an examination of the Tenth District, composed of Indiana, Armstrong and Westmoreland, presided over, as has been indicated, by Hon. John C. Knox, whom the Governor imported from Tioga County on the northern border.

In 1846 the Whigs and Anti-Masons were so successful that they captured both houses of the Legislature, so that the Governor and the Senate dead-locked on many questions, among them judicial nominations. The term of Judge Thomas White,<sup>2</sup> of the Tenth District, approaching its expiration, "16,000," says Col. A. K. McClure in his "Reminiscences," "embracing nearly an equal number of Whigs and Democrats" of that district, "signed petitions to Governor Shunk asking for his re-appointment. There was no blemish on Judge White's judicial record that could be urged against him, but Governor Shunk, in obedience to the imperious demands of party interests, refused to nominate the Whig Judge. At different times he sent several names of Democrats to the Senate to fill Judge White's place, and all of them were admittedly eminently qualified, alike in character and attainments, to fill the judicial chair, but the Whig Senators decided with entire unanimity that they would not be a party to the sacrifice of one of the ablest and most popular Judges of the state simply because of his political faith, and every nomination sent to the Senate was promptly rejected. The agitation became intense in Judge White's district, and the contest naturally attracted very general attention throughout the state. The Senate claimed that it was part of the appointing power as a co-ordinate branch of the Government, and that it could not consistently permit a competent and faithful Judge to be smitten because he hap-

<sup>1</sup> *The Pennsylvanian* (Forney, editor), April 26, 1849. Just why the Pittsburgh "district court" list should be omitted here is not known.

<sup>2</sup> Judge White was the father of Judge Harry White, long well known as the President Judge of the bench of Indiana County in recent years.



pened to harmonize with the Senate in political faith rather than with the executive. It was the burning question of the state for a year or more, and it started in every section of the commonwealth an organized effort to strip the executive of the appointment of Judges in the interest of a non-partisan judiciary. In the meantime Judge White's district was without a Judge, and great inconvenience was suffered by the people. The result was, after Shunk's reelection in the fall of 1847, the Whig Senators regarded the contest as hopeless, and they finally indicated a Democrat who could command an affirmative vote in the Senate. John C. Knox had been several sessions in the House as a Representative from Tioga County, and was accepted as the Democratic leader of the body. He was young, delightful in companionship, able in council or debate, and personally popular with both sides of the chamber. He was indicated by the Whig Senators as the man they would confirm, and he was nominated by the Governor, who was glad to emerge from the conflict with a Democratic judge, \* \* \* ." It required but one or two similar contests to convince the people that if justice was to be subordinate to party interests they could do that well themselves and possibly improve upon it. This was a long step to the conviction that now was the time for the people to elect the judiciary themselves.

What they actually did may be seen, after it was done, through the eyes of one of the ablest opposers of the elective principle, namely, the distinguished Philadelphia lawyer, Charles J. Ingersoll, writing late in 1849, two years after the above incident. "As lately as the session of 1848," he says in the leading published argument against the system, "a Senate resolution for electing the judges, found in the House, among the immediate representatives of the people, but twenty-four members to vote for it; and, as no debate on this subject had been heard there between the concurrence with the Senate resolution in 1849, and the refusal to concur, in 1848, it is not easy to understand upon what new motive or warrant this most important step was ventured. We verily believe that, so far from our fellow-citizens generally having called for and expected it at the hands of

the Legislature, there were few men within the four corners of the state who knew that such a measure was in serious progress. The newspapers gave little or no information about it. The papers of the 1st of March, 1849, announced that, on the 28th of February, the day before, in 'the Senate, the resolution relative to an amendment of the constitution so as to make the judges elective, was taken up, and opposed by Messrs. Overfield, King and Drum, and supported by Mr. Small; passed second reading, and was ordered to be transcribed for a third reading,' and those of the 2d of March, that, on the 1st of March, 'the bill for the election of the judges by the people was read a third time, and passed; yeas 21, nays 8.' But no debates, or reports of debates, no public agitation or discussion, either in, or out of doors, of this most grave topic arrested the attention of the country, or gave warning of what was at hand. When the question came before the House, on the 2d of April, after being reported against by the Judiciary Committee, members, incredible as it may appear, would listen to no discussion; the previous question was called, debate cut off, and Mr. Cornyn, of Huntingdon County, who was addressing them in strong and convincing terms, was stopped in the midst of his speech. It is actually a fact, established by eye-witnesses, and vouched by the journal, that the constitution of the state was not, by the representatives of the people, thought to be worth an argument. While, as the same journal exuberantly proves, divorce bills, bank bills, charters for hose companies, gas works and graveyards, bills to change men's names, to gratify their whims and fancies, or facilitate the conveyance of their estates, bills, in a word, for the relief, ease, or comfort of this or that individual, could be debated *ad libitum*, this high constitutional question, which, for good or evil, touched the condition of every man, woman and child in Pennsylvania, was denied the decency of a hearing!" Referring to the judiciary he adds: "Its enemies say, and they are not a few, in the year 1790 we made the judiciary independent, we gave it the life tenure, we entrusted the power of appointment to the executive, and we then made a forty-nine years' experiment of it, and it failed. In 1839 we modified it,

making the tenure of office for a term of years only, instead of for life, but still leaving the appointing power with the governor, to be aided by the Senate; we then had a nine years' experiment of it, and it failed again. And now we are going to make root and branch work; it shall go to the polls with the governor and Legislature." With this, by the way of introduction, Mr. Ingersoll takes up his argument to overcome that vote of 21 to 8 in one house and 56 to 26 in the other, which was based not merely upon the political rivalry of the legislative and executive branches of the state government, but upon the fact that other states had decided for an elective judiciary, notably New York, which had had nearly two years' experience under the system.<sup>1</sup>

Fortunately, a member of the Legislature who favored the amendment, now a venerable metropolitan judge, has happily told his story of it also. "The first question that I recall of great public interest connected with our profession," said Hon. Craig Biddle, of Philadelphia, in an address some years since, "was the question whether it would not be desirable that the judges of our court should be made elective by the people, instead of, as then, appointed by the Governor and confirmed by the Senate. A vacancy had recently occurred in our Common Pleas Court and our community was, of course, very desirous that it should be acceptably filled. The contest for the office named had brought itself down to two of our fellow-citizens, both of whom had warm adherents. The Governor was asked to give their friends a hearing, so that they might present to him their respective merits. A day was named by the Governor, and the parties found, rather to their surprise, on arriving, that the same day and same hour had been appointed for both of them. The interview was had, and at its conclusion the Governor said that he had no doubt the worthy gentlemen named were admirably suited to the office, but he had made up his mind to appoint a political friend of his own, who resided in the

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<sup>1</sup> "Some Objections to a Joint Resolution, Passed at The Last Session of the Legislature, and About to be Submitted at the Approaching Session, Recommending to the People of Pennsylvania An Elective Judiciary, December, 1849." It was well known at the time to be the work of Mr. Ingersoll, although his name does not appear on the pamphlet.

interior of the State, and he would at once send him down. This certainly solved the difficulty, and, at the same time, offended the friends of both candidates. While they were prepared to submit to the result of the choice between them, they were quite unprepared to have a non-resident stranger placed over the heads of both of them. After this, the idea that Judges should be elected by the citizens of their respective districts met with very receptive minds in our community. \* \*

\* It happened, fortunately, that I was a member of the Legislature for 1849 and 1850, as a representative from the city of Philadelphia, and Judge Finletter, in 1850, was a delegate from the County of Philadelphia, they then having different representatives. We are both in accord on this question. In the Legislature of 1849 there was very little organized opposition to the passage of the amendment, it being supposed that it could readily be defeated; but, through the exertion of Mr. Swartzwelder, an able lawyer from Pittsburgh, we succeeded in carrying it.

"Before the meeting of the next Legislature," continues the venerable Philadelphia jurist, "it began to be realized that its passage would remove from office every Judge in Pennsylvania, then numbering about one hundred and sixty. They and their numerous friends everywhere were rallied for its defeat. Mr. James Madison Porter, at one time Secretary of War, an able lawyer and forcible speaker, was sent to the House of Representatives from Northampton County and led the opposition. Mr. Horace Binney gave his great name and influence against it here in Philadelphia. The ablest attack on it, however, was from Mr. Charles Ingersoll, of Philadelphia, who, in an admirable pamphlet of sixty pages, stated in vigorous terms all that could be said against it. This, of course, we from Philadelphia were especially expected to reply to in our speeches on the floor, and we made it the object of attack. The amendment \* \* \* had \* \* to go before the people. Of them we had no fear, the average politician, we thought, would be very shy of going before the people and trying to convince them that their intelligence was

insufficient to enable them to choose their own Judges."<sup>1</sup>

During the session of the early half of 1850 this pamphlet, as well as other influences, produced an amount of debate in the Legislature so exhaustive as to quite balance the absence of it the previous session. The result showed it all in vain, however, and the amendment went before the people in October. On the 5th of that month, Forney's *Pennsylvanian* said editorially: "We consider that the day has passed for argument on this subject, and particularly with the Democratic party—that party of liberty and progress, as a mass, have already decided the question. They passed the law for submitting the amendment to the people, and beyond doubt the party in general will most triumphantly carry it at the polls. Why not? Are not the people of Pennsylvania as well qualified to select their Judges as those of New York, Mississippi and other states, where it has been found to work so well? Undoubtedly they are, and they will demonstrate their ability to do so by first carrying the amendment, and next by doing themselves honor in carrying its provisions into effect"—all of which was, allowing something for campaign exuberance, a pretty accurate statement of the situation, although not quite enough credit was given to a great body of Whigs and other parties.

The amendment carried overwhelmingly, by a vote of 142,390 to 71,352. The only counties which gave a majority against it were Adams,<sup>2</sup> Blair, Cambria, Carbon, Chester, Cumberland, Dauphin, Huntingdon, Lehigh, Mifflin, Northampton and Schuylkill—a most interesting set of groups, namely, Adams, Cumberland, Dauphin, Mifflin, Huntingdon, Cambria and Blair, on the one hand, with Northampton, Lehigh, Carbon and Schuylkill on the other, and Chester in the southeast. Here were the conservative influences that sympathized with the beliefs of such men as Chief Justice Gibson, who felt so strongly on the subject that he described himself as the

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<sup>1</sup> "Reminiscences of the Bench and Bar," an address delivered by Honorable Craig Biddle, LL.D., President Judge of the Court of Common Pleas, No. 1, of Philadelphia County, before the Law Academy of Philadelphia, May 17, 1900.

<sup>2</sup> Forney's *Pennsylvanian*, 23d October, 1850. Armstrong County is omitted from Forney's list.



last of the Chief Justices of Pennsylvania. Gradually the state began to prepare for the great election, and by November most of the Democratic press of the state were convinced that measures should at once be taken for a separate judicial convention for the Justices of the Supreme Court. Up to this date Mr. Forney states that only one Democratic paper had opposed it.<sup>1</sup> It was decided to call one, however, for June 6, 1851, although this was so close to the gubernatorial convention that it was destined to be put off a little later, namely, the 11th, at Harrisburg.

Candidates for the Supreme Bench were brought forward during the winter, and it was plain that the home of James Buchanan was intent upon their President Judge for one of the places. Hon. James Campbell, of Philadelphia, was one of the candidates and the one who was attacked the most bitterly because he was a Catholic. On the 17th of January, 1851, Judge Lewis presided at a banquet in Lancaster to celebrate Franklin's birthday. It was so important an event as to be reported in full in the Philadelphia papers, and one of the toasts was to the presiding officer himself. Along in February (the 11th) a letter appeared in the *Pennsylvanian* telling of a remarkable case of dispatch in Judge Lewis' court: It was a case of slander, the words being spoken on September 5, 1850, the action brought on December 4th, plea entered December 28th, and verdict rendered February 5th. "When it is recollected," said the writer, who signed himself "S," that Lancaster County contains one-seventeenth of the population, and one-tenth of the property of Pennsylvania, exclusive of the counties of Philadelphia and Allegheny, in which there are District Courts, and that one law judge now transacts the entire business of Lancaster City and County, in which it was formerly thought necessary to maintain a District Court and a Mayor's Court, this dispatch cannot fail to appear extraordinary."

On March 15th, the Democratic county convention met at Lancaster, and among other things they resolved "that we are in favor of selecting as candidates for the Judiciary men whose moral characters are above re-

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<sup>1</sup> *Ibid.*, November 11, 1850.



proach, who are known to possess talents of a high order, and whose honesty and integrity as jurists will be sufficient guarantee that in their hands the rights, liberty, and property of the people will be safe. And as, from the size, population and importance of Lancaster County, we deem her claim to one of the candidates to be entitled to proper consideration, we respectfully recommend to the State convention our esteemed fellow citizen, Hon. Ellis Lewis, whose well-known talents, energy and industry, have very properly placed him in the front rank of Pennsylvania jurists, and whose great popularity in Lancaster County, and throughout the State, would strengthen the judicial ticket, and insure its election by a triumphant majority."<sup>1</sup> They also lauded the name of Buchanan as a candidate for the presidency.

Another important feature of the life of Judge Lewis may be mentioned at this point in connection with the announcement on May 7th that he was reëlected President of the Williamsport and Elmira Railroad, in which he had been long interested. This was to connect with the New York and Erie road. "When it is considered," said an editorial in a Philadelphia paper, "that the Lake trade, for the year 1848, amounted to the enormous value of \$186,484,905, being forty millions of dollars more than the whole foreign export trade of the United States—that this trade is constantly increasing—that a very large portion of it will proceed to the seaboard by way of the New York and Erie Railroad—that on arriving at Elmira, both Philadelphia and Baltimore may be reached by the W. and E. Railroad, at a shorter distance and by better grades than to New York City—it is manifest that the Williamsport and Erie Railroad must be regarded as one of the most important and profitable Railroads in the United States."<sup>2</sup> It was not yet completed. The road was one of the oldest chartered in the United States, dating back to 1832. It is interesting also to note that the first twenty-five miles of this road was laid with wooden rails and that horses were the motive power. It was only two or three years after this date that these gave way to iron rails and

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<sup>1</sup> The current *Lancaster Intelligencer*.

<sup>2</sup> The *Pennsylvanian*, May 7, 1851.

engines. It is now a part of the Pennsylvania's Northern Central Line.<sup>1</sup>

The railway was a mere incident in Judge Lewis' experiences during the spring of 1851. The Judicial convention met on June 11th at Harrisburg, and Hon. William Wilkins, of Pittsburgh, was made permanent chairman. "We are called upon," said he, "in accordance with the provisions of an amendment to the Constitution, to designate the individuals—for I firmly believe they whom we designate will be elected—who shall occupy the Supreme Bench of the State of Pennsylvania. And here it becomes us to reflect upon the nature of this highest department in the government. It may be styled an oligarchy—an aristocracy—so illimitable is its power. They can, by their decisions, nullify the combined action of the Legislature and the Executive power, and upon them devolves the construction of our Constitution." He then expressed regret that the people did not provide for direct election of a Chief Justice, instead of allowing it to be done by "the toss of a copper." The nominations were then made in the following order: James Campbell, John B. Gibson (then Chief Justice), Jeremiah S. Black, Luther Kidder, Richard Coulter (then of that court), Walter H. Lowrie, Joel Jones, Thomas S. Bell (also then of the court), Ellis Lewis, George W. Woodward, David Krause, Molton C. Rogers (also of the court), H. Hepburn, A. J. Wilson, and James Thompson, omitting those withdrawn. The vote was to be taken on the basis that the five having the greatest number of votes should be the candidates. The first ballot settled the matter by giving Black, of Somerset, 99; Campbell, of Philadelphia, 87; Lewis, of Lancaster, 78; Chief Justice Gibson, of Cumberland, 69; Lowrie, of Pittsburgh, 68;—the successful ones, with Kidder, Bell, Thompson, Maynard, Woodward, Coulter (with 23), Wilson, Rogers, Jones, and Krause in that order. The result was generally well received. Editor Forney, who was generally able to express public sentiment well, said: "It is in truth a proud spectacle to be called upon to vote for five such men, and the friends of the Elective Judiciary have reason to congratulate themselves upon a result which the

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<sup>1</sup> Wilson's History of The Pennsylvania Railroad, Vol. I, pp. 271-2.

efforts of enemies of that system led us to fear, would not be effected without the most disastrous dissensions." He also said: "Of Ellis Lewis we need say little; for his name is everywhere accepted as the name of one of the boldest, ablest, and most thorough jurists of the country. His legal works are standards in the profession, and display the energy, the learning, and the research, which are so essentially his characteristics. He has long been identified with the Bench and the Bar; and, though still in the vigor and prime of life, he has contributed vastly to the simplification of the practice, and to the popular elucidation of the principles of the existing code." A public letter stated that all the delegates from counties in which he had lived voted for Judge Lewis.<sup>1</sup>

The opposition ticket was that of the Whigs, which was placed in nomination by the convention held at Lancaster a few days later, namely, on June 25th. In this convention, which claimed to choose judicial nominees without regard to party, Richard Coulter, of Westmoreland (then of the court), received 113 votes; Joshua A. Comly, of Montour, 104; George Chambers, of Franklin (of the court also), 96; William M. Meredith, of Philadelphia, 77; and William Jessup, of Susquehanna, 62 (on another ballot, 77), were chosen.<sup>2</sup> The campaign was then on in earnest, for the two tickets were both excellent, although the Democratic ticket, as a whole, was undoubtedly more in touch with the people. The fact that Campbell, of Philadelphia, was, from the first mention of his name, bitterly attacked as a Roman Catholic, indicated a weak point in the probability of success, while the co-relative fact that Justice Coulter had been nominated in both conventions and received the highest number of votes in the Whig convention suggested a probable solution of the election problem.

President Wilkins and his vice-presidents issued a strong address to the people on the judicial nominations, reciting facts, so far as Judge Lewis is concerned, that need not be repeated. "We have in Pennsylvania," says one paragraph of the address, "a beautiful system of jurisprudence. It is said to be peculiar. It certainly is

<sup>1</sup> *The Pennsylvanian*, June 12th, 14th, 16th and 25th.

<sup>2</sup> *North American and United States Gazette*, 26 June, 1851.

not very well understood out of the State, and its excellence is not fully appreciated by all within it. Casting aside the trammels of technicality, we combine in one forum and essentially under the same form of proceeding, the administration of law and equity. With us law and equity, if not synonymous terms, are both parts of a great whole. For this admirable system we are much indebted to the wisdom and forecast of our ancestors. Wherever a party would, in other States or countries, be entitled to redress at law or in equity, he can obtain it here under our combined system. If a person who has a just or lawful claim enters one door of the temple of justice, we do not deny his suit, turn him out and bid him enter another to seek the relief to which he is entitled. Our temple of justice has but one door of entrance, and our system is simple and harmonious in its action when properly understood and intelligently carried into execution. It is challenging and will continue to challenge, the admiration of other governments, who are beginning to adopt it, and we should be careful how we mar its symmetry, entail upon our posterity the evils, delay, expense and arbitrary power of a separate equity administration, and fall back upon that which the wisdom of experience is abandoning elsewhere. It follows that in Pennsylvania a man to be a good lawyer or a good judge must be familiar as well with the rules and principles of law as of those of equity. We looked for these qualifications in the candidates before us, and believe we have essentially obtained them in the gentlemen selected."

Judge Lewis was the senior of this list, if the venerable Chief Justice Gibson, then seventy-one years of age, be excepted—an exception that the Whigs tried to make much of. Lewis was fifty-three, while the others were what would properly be called young men: Judge Lowrie, of Pittsburgh, being but forty-four; Judge Black, forty-one, and Judge Campbell thirty-eight. Gibson had been on the Supreme Bench for thirty-five years and was one of the legal luminaries of the world, but a new generation's influence was somewhat against him. Black's powerful personality stood him in good stead as well as his ten years' experience on the Sixteenth

District bench. Campbell had a remarkable career, having had almost as long an experience as a law judge on the Philadelphia Common Pleas, to which he was elevated when but twenty-nine years of age, but the feeling against Roman Catholics in office was a serious obstacle in his path. Judge Lowrie, who had been Professor of Law at Pittsburgh, in the Western University, had been the successor of Grier and Hepburn in the District Court there, with about five years' experience and great popularity. "As will always be the case," reads the address, "their minds differ from each other, yet in that very difference, making up, collectively, as able a bench as perhaps we have ever had in Pennsylvania, and one which we cannot too strongly recommend to your support. They are all pure democratic republicans—all born and educated within the bounds of our own Commonwealth—have all long served in the democratic ranks. Before their appointment to their present judicial stations (as it will be observed they were all at this moment Judges of high standing) they were men of prominence in the party, and enjoyed its confidence in a very high degree."<sup>1</sup>

The Whigs attacked the various Democratic candidates, and, among these attacks, brought up Lewis' experiences as an apprentice. His friends thereupon published an opinion of his on a somewhat similar case, *Commonwealth v. Hemperly*, the last paragraph of which says: "In this case the master had no right to demand the services of the apprentice in matters not connected with the trade which the one was to teach and the other to learn, and violated his indenture in forcibly compelling the apprentice to render such services, from time to time, as the master's convenience required, during the whole period that the boy remained with him. For these reasons the apprentice is discharged from his apprenticeship, and from the articles, covenants and agreements of his indenture of apprenticeship." The editor asserts that Lewis had to clothe himself during his apprenticeship days, showing that his was a case of injustice also.<sup>2</sup> Nor did they neglect to remind the public how, in 1833, many were "sick and in prison" and he "visited them" and

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<sup>1</sup> *The Pennsylvanian*, July 3, 1851.

<sup>2</sup> *The Pennsylvanian*, August 13, 1851.





DEMOCRATIC POSTER  
 of the campaign for the First Elective Supreme Court in 1851,  
 in possession of Chief Justice James T. Mitchell, Philadelphia





liberated them in the first law of abolition of debt imprisonment. Nor did Whigs generally favor the attacks made by some of their members. The Whig *Tribune*, of Lancaster, on August 26th, in a fine tribute to their President Judge said that such attacks only hurt the Whigs themselves and were deprecated by "intelligent and respectable Whigs."

No attack seemed to have any influence, however, on the prospects of any of the ticket, except that on Judge Campbell. On October 4th the Philadelphia *Bulletin* seemed to head an effort to put out tickets on which Coulter's name displaced that of Campbell; at least editor Forney charged the *Bulletin* with leadership in the matter. This proved to be an effectively concerted movement with an issue of circulars, stating that many Democrats had accepted the substitution as the best thing for the strength of the ticket. The Democratic powers had put out an illustrated circular with a group of portraits of their candidates, including Judge Campbell.<sup>1</sup> The State Central Committee issued a warning against the Coulter substitution on October 6th in emphatic capitals of all sizes. By October 23rd, when the returns were coming in, the interest centered in the Governor and Judge Campbell—the rest of the Democratic ticket seemed to be certain of election; but this anxiety only foreshadowed the defeat of Campbell. The returns published on the 27th as official, except those from Potter County, in which case an estimate was inserted, gave Governor Bigler 186,507 votes. Among the Supreme Judges, Black received the highest number—though not equal to the Governor's—namely, 185,761; Lowrie came next with 185,429; Gibson followed with 184,363, and Lewis with nearly the same, 184,064; while Coulter received 180,130, as against Campbell's 176,071 votes, which latter was nearly 3000 votes ahead of the rest of the Whig judicial candidates. The new court was to meet on November 7th at Harrisburg to cast lots for the shortest term and the Chief Justiceship and

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<sup>1</sup> This print is rare now. The author found four of these portraits some years since in the possession of the late Richard Winship. The only other ones he has seen are the one in charge of the Historical Collection of the Pennsylvania State Bar Association, at the University Law School, Philadelphia, and the one here reproduced through the courtesy of Hon. James T. Mitchell, Chief Justice.

receive their commissions, while they were to have their first session *en banc* in Philadelphia the second Monday in December. The casting of lots resulted as follows: the three-year term and Chief Justiceship for Black; the six-year term for Lewis, with succession to Chief Justiceship; the nine-year term to the ex-Chief Justice Gibson; the twelve-year term to Lowrie and the fifteen-year term to Judge Coulter. On December 8th (1851), the Chief Justice and Justices Lewis and Lowrie were at McKibbin's Merchants' Hotel, at 36 North Fourth street; ex-Chief Justice Gibson was at the United States Hotel, on Chestnut between Fourth and Fifth, and Justice Coulter at Jones', 152 Chestnut street, and the organization of the court was perfected that day at the court room at Independence Square, and late the following month James Campbell became Attorney-General."<sup>1</sup>

Before passing from this final conflict in the long struggle of the people of Pennsylvania to create their own judiciary directly—a struggle that began with the creation of the Provincial Supreme Court in 1684—it will be interesting to note a view of this conflict a quarter of a century later by one who was in the judicial convention that nominated Justice Lewis.

"The greatest fear of the thoughtful," said James Alexander Fulton, referring to this period in a letter written in 1873, "was, that the judicial office would become at once the prize and the prey of the politicians \* \* \*. But the very greatness of the interests at stake inspired caution and forbearance in the outstart;

<sup>1</sup> It is interesting to note that of the twenty-four President Judges elected in the State, fourteen were Democrats and ten Whigs. The former were as follows: First District (Philadelphia), Oswald Thompson; Third (Northampton and Lehigh), Washington McCartney; Fourth (McKean, Tioga, Potter and Elk), R. G. White; Eighth (Northumberland, Lycoming, Centre and Clinton), Alexander Jordan; Ninth (Cumberland, Perry and Juniata), James H. Graham; Tenth (Westmoreland, Indiana and Armstrong), J. M. Burrell; Eleventh (Luzerne, Wyoming, Montour and Columbia), John N. Coaynham; Thirteenth (Bradford, Susquehanna and Sullivan), David Wilmot; Fourteenth (Fayette, Washington and Greene), Samuel A. Gilmore; Eighteenth (Venango, Clarion, Jefferson and Forest), John C. Knox; Nineteenth (York and Adams), Robert J. Fisher; Twentieth (Mifflin and Union), A. S. Wilson; Twenty-first (Schuylkill), Charles W. Hegins; Twenty-second (Monroe, Pike, Wayne and Carbon), N. B. Eldred; and Twenty-third (Berks), J. Pringle Jones. The Whigs were as follows: Second (Lancaster), Henry G. Long; Fifth (Allegheny), William B. McClure; Sixth (Erie, Crawford and Warren), Elijah Babbitt; Seventh (Bucks and Montgomery), D. M. Smyser; Twelfth (Dauphin and Lebanon), J. J. Pearson; Fifteenth (Chester and Delaware), Townsend Haines; Sixteenth (Franklin, Bedford, Somerset and Fulton), F. M. Kimmell; Seventeenth (Beaver, Butler, Mercer and Lawrence), Daniel Agnew; and the Twenty-fourth (Huntingdon, Blair and Cambria), George Taylor.

and, thanks to the virtue and discriminating intelligence of the citizens of that noble old commonwealth [Pennsylvania], have been able to maintain a conservative public opinion ever since. The small number of the class from which the law judges had to be taken, and the infrequency of judicial elections, no doubt somewhat abashed the professional politicians, and did much to withdraw the judicial office from the seething caldron of politics. The same year the amendment was adopted, elections were held for state officers; and, although neither the Democrats nor Whigs had yet held their nominating conventions, yet, by common consent, both these great parties resolved to hold *two* distinct conventions, one to nominate candidates for *judicial*, and the other for *political*, office. This was a wise and conservative measure, and has had much to do to keep the judiciary out of mere politics ever since.

"Of the constituents of the Whig convention I cannot now speak, but having been a member of the Democratic judicial convention, I am able to say that it was composed almost entirely of lawyers, and largely represented the learning, ability and honor of the Democratic bar of Pennsylvania. To maintain the high character of the bench was its first and great aim. Hence, political considerations were almost entirely discarded, and the remark oftenest heard was, 'I came here to nominate the ablest and best men we have.' Indeed, very few of the members of that convention were politicians, and would not have gone to a merely political convention. They were lawyers, and went to maintain the integrity and vindicate the honor of the bench, by the selection of honest and capable men. The result of their deliberation was the nomination of as good a ticket for supreme judges — all the state conventions had a right to make — as ever was presented to an intelligent constituency. They were John B. Gibson, Ellis Lewis, Jeremiah S. Black, Walter H. Lowrie and James Campbell. They were all nominated on the first ballot, and were all elected but the last. All of them by their subsequent conduct, justified the confidence of the convention, and made for themselves a reputation far more extensive than the limits of their own State. The bar took the work in hand

promptly and earnestly, and did it well and successfully.

"In most of the districts," continues the writer, "the opinion of the bar has had a controlling influence in the selection of the bench ever since the amendment was adopted; and, in some, a direct and absolute control. It is doubtful whether there is now a single district in Pennsylvania in which the opinion of the bar has been disregarded in the selection of the judges. Even in Philadelphia, where the politicians, as a class, are notoriously venal and corrupt, their degrading and baneful influence in this department is counteracted and ameliorated by the conservative and healthful influence of her bar, who, upon this subject, lay aside their political preferences and unite upon candidates whom they believe to be above reproach, and thus, generally, secure their triumphant election. By such influences the judiciary of Pennsylvania has been preserved in its integrity, and stands now, perhaps, as high in the esteem and confidence of her people as ever it did.

"The old system gave us for supreme judges such men as McKean, Tilghman, Yeates, Huston, Rogers, Sergeant and Bell; the new has given us Black, Lewis, Lowrie, Woodward, Thompson, Agnew and Sharswood; while both have given us Coulter and Gibson. I shall not compare them or speak of their respective merits, but only say that they all do honor to the exalted and responsible positions they have respectively held. It is because this system, under the amendment, has worked so well and satisfactorily" that the writer thinks it will not be abandoned. "Indeed," he adds, "I may remark in conclusion, that the selection of the judges in Pennsylvania has ever been in the hands of the bar. When they were appointed, the executive was greatly influenced, if not absolutely controlled, by its wishes, and now, since they are elected, we see the same power directing and controlling as before. In both cases the result is a bench as distinguished for its ability as for its purity—one that is an honor to the law and to the great State whose judicial system they both represent and uphold."<sup>1</sup>

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<sup>1</sup> A letter to the *Albany Law Journal* of February 8, 1873, by James Alexander Fulton, then of Dover, Delaware, in relation to the Constitutional Convention of 1873-4.

## CHAPTER XI

### A JUSTICE OF THE SUPREME COURT

1851

The career of a justice of the Supreme Court, on its technical side, is a part of every lawyer's library and training, namely, the opinions rendered by him which are preserved in the official reports. These are, as a rule, the decisions of the whole court, formulated by him at their request. In consequence, the substance of his opinion—the material of decision—cannot properly be considered personal, as it is the common product of the entire court; although even the professional follower of the law at times unconsciously attaches it overmuch to the person. In the expression of this common decision, however, a vast amount of the human individual characteristic is injected, so that decisions of jurists become most interesting expositions of both mind and character in varying degrees—and the mind and character of the members of the highest tribunals in our states and nation are of the inmost texture of the history of those commonwealths and the national body.

At the first session of the newly-elected Supreme Bench at Philadelphia in the winter of 1851-2, there were one hundred and seven decisions rendered which required expression in an opinion, an average of about twenty-one opinions to each justice had they been evenly distributed. These opinions were not, however, evenly distributed, but whether this was due to the ill-health of Justice Coulter or the advanced years of the late Chief Justice or from some other cause is not now known. For some reason though an unusual number of these opinions were assigned to Justice Lewis, so great a number, namely, forty, as to be practically the share of two men. And what interesting contrasts the opinions of this body furnish! And what various ideals each of these justices seemed to have! There was the virile



free expression of Black; the finished and classically complete opinion of Gibson; the vigorous warmth of Coulter; the full treatment and ethical flavor of Lowrie; and the direct, exact and learned expression of Lewis. Not, of course, that these features would always appear equally noticeable, for often an opinion is so purely technical as to be of interest to the legally trained alone, but in a large number of opinions there occur many that are especially characteristic.

Justice Lewis' first expression that has been reported was a dissent, in a case where Justice Lowrie expressed the opinion of the rest of the court;<sup>1</sup> but in this entire long session he had but two other occasions to disagree with the majority of the court. His first opinion was on a construction of the will of Stephen Girard:<sup>2</sup> "It is certainly true," said he, "that there is a looseness of expression in the instrument before us; but this only demands, with more urgency, that the general intent shall overbear small objections of expression and punctuation. There is as much propriety in understanding the testator to speak distributively in reference to the docks and platforms as in regard to the wharves. The wharf, the dock and the platform are so connected with each other in their construction and in their uses, that they may be regarded, for many purposes, as identical. The dock is useless without the wharf; the latter is of no value independent of the dock; the platform is but an extension of the wharf; and the owner of the wharf receives the profits of the whole. Why then should the charges of keeping the whole of this structure in proper condition for its uses be divided? Why should a stranger assume the duty of keeping the docks in order, while the owner, who receives all the profits of the dock and wharf, is only required to keep the wharf in order? An unequivocal declaration of such intention would, of course, be regarded and enforced; but, in our opinion, no such intention is expressed."

In another opinion is seen a luminous expression on corporations, showing his editorial experience in bringing a difficult subject within range of popular comprehension: "But as those who enacted the by-law give it

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<sup>1</sup> 5 Harris, 103.

<sup>2</sup> *Ibid.*, 111.

a different interpretation, and claim the power to pass by-laws affecting contracts previously made, it is proper to state our opinion on this question also. Corporations are the creations of the law, and possess such powers as are specifically granted. In general, acts of incorporation are designed to give them only the like capacity to act, in respect to the particular objects for which they are created, that natural persons possess in respect to their own affairs. A corporation has no power to invade the rights of individuals. A by-law, when used for this purpose, is totally misapplied." And further on, after stating a situation, he says: "The soundness of this position may not readily be perceived, because corporate action assimilates in form to the action of sovereignties, and the aggregation of intelligence and influence which exists in such cases, creates habits of thought, and, in practice, produces a power which tends to obscure the sense of right and equality."<sup>1</sup>

The new court had not finished its Philadelphia session before its ranks were broken by the loss of the one member who was not on the original Democratic ticket. Justice Coulter died on the 20th of April, 1852, and was replaced the next month by one of the prominent names before the Democratic convention, Hon. George W. Woodward. Justice Woodward was a native of Wayne County, son of one of the associate judges of it, who was of the old Connecticut-Pennsylvania blood. He was now only forty-three years old, had learned his law under Garrick Mallory at Wilkes-Barre and succeeded to his practice when Mallory went on the bench in Wolf's administration. He had been in the constitutional conventions of 1837-8 and had been a President Judge from 1841 until the elective judiciary law went into effect. President Polk had nominated him for the National Supreme Bench in 1845, but through Cameron and Buchanan, it is said, he was not confirmed. Governor Bigler appointed him to succeed Justice Coulter and he was elected to the position in the fall of that year and had a long service of fifteen years. Judge Woodward was at once recognized as one of the ablest of this dis-

<sup>1</sup> 5 Harris, 141. Mr. Buchanan, writing from Wheatland, February 4, 1852, says: "I am rejoiced to learn from different sources that your Judicial career thus far has given great satisfaction in Philadelphia. May it ever so continue!"

tinguished bench and a worthy successor of the late Justice Coulter.<sup>1</sup>

The session of 1852 that sat in Harrisburg must have brought anew old memories to Justice Lewis as he walked the streets where he had spent his apprentice days in Wyeth's old printing establishment forty years before and danced around bonfires for the victories of 1812. Justice Lewis was now fifty-four years old as he joined Black, Lowrie, Gibson and Woodward on the bench at the state capital. The session here was, of course, not so crowded as in Philadelphia, as there were but sixty-two cases on the docket, and these were this time more evenly distributed, Lewis delivering fifteen of the sixty-two opinions and dissenting but once. In one of these opinions is found the following: "Fortunately for the consistent and humane administration of justice, the courts of this country are no longer influenced by the feudal policy which favored the eldest son to the exclusion of other claims; and are not restrained, as Lord Eldon was, from contradicting a decision of the House of Lords, if founded upon a principle which has no existence in this country, and the decision be opposed to reason and justice, and to the opinions of enlightened jurists, in that country as well as this."<sup>2</sup> Again, referring to financial liabilities made solely from motives of friendship, believing that they ought to be preferred creditors, and opposing any change of this presumption, he said: "At all events, a change so important in the business transactions of the people ought not to be put into operation by the courts until the Legislative will to that effect be plainly expressed."<sup>3</sup> One other expression may be noted: "After the lapse of three score years and ten the memory fails, witnesses die, and documents are lost or mislaid. It is therefore difficult, and frequently impossible, to establish, by positive evidence, the facts of an ancient transaction. The law, in furtherance of justice, and for the protection of society, has, in such cases, substituted for positive evidence the doctrine of presumptions. A

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<sup>1</sup> Sketch of Hon. George W. Woodward, by George B. Kulp, Esq.

<sup>2</sup> 7 Harris, 56.

<sup>3</sup> *Ibid.*, 61.

possession of twenty-one years is not only sufficient defense to an ejectment, but is a title on which a plaintiff may support such an action against another. Deeds thirty years old, in accordance with the possession, may be given in evidence without proof. Thus, as 'the scythe of time destroys the evidences of title, the hour-glass measures out the period when those evidences are no longer necessary.'"<sup>1</sup>

The Sunbury session of 1852 also brought him again into a region where his real life had begun and where he had made a name as the people's friend in the very troublesome settlement of land titles which so long afflicted that part of the state. But thirty-one opinions were the result of this session, and seven of them were assigned to Justice Lewis, while he was constrained to disagree with the court in two instances. It was upon the subject of land titles here that one of his most interesting expressions occurred: "If any branch of the law," said he, "has peculiar claims upon the firmness of the bench, it is that which relates to land titles. The contest is frequently between distant owners and individuals claiming by possession or settlement. In such cases the hardships and poverty of the latter always secure the sympathies of their benevolent neighbors, when called into the jury box. Under such circumstances the Court should hold the scales of justice with a steady hand. When the law is explicitly declared by the judge selected for the purpose, there is among our intelligent and upright people an abiding devotion to its supremacy which will always insure a correct decision."<sup>2</sup> "As an honest man," he says in another interesting expression, "it is natural that he should feel his conscience touched by the peril in which his own mistake, in a duty which he had undertaken to perform with fidelity, had placed the party who confided in his knowledge, accuracy and integrity. Precisely to the same extent would the case reach the conscience of a chancellor. It is not always possible to ascertain whether an error of this kind is occasioned by fraud or mistake. For this reason the law in its wisdom declares

<sup>1</sup> 7 Harris, 69.

<sup>2</sup> *Ibid.*, 210.

that it shall not be taken advantage of by the party who caused it. No one shall profit by his own wrong."<sup>1</sup>

The remaining session of 1852 at Pittsburgh, the home of Justice Lowrie, resulted in as many opinions as at Harrisburg and Sunbury combined, and nearly as many as at the previous Philadelphia session—ninety-four, an average of about eighteen to each of the five members of the court. As before, Justice Lewis had more than his share—twenty-two—or nearly one-fourth, and found but two occasions of disagreement with his brethren. In one of these opinions he says, regarding free speech: "The freedom of the press is as well deserving protection as the liberty of speech; but no one, in his wildest enthusiasm in favor of the former, has claimed the right to establish printing presses in the public streets."<sup>2</sup> Again, in referring to the words "equity and justice" in a certain act of Assembly of 1840, he said: "This may be understood as adopting the principles of equity which had heretofore governed Courts of Chancery, in applications of this kind. It was certainly not the intention of the Legislature to keep litigation on foot for a longer period than necessary for the purposes of justice; or to nullify the solemn decisions of the Courts, at the mere will and pleasure of any party who chose to demand a rehearing, within five years, upon the same questions of fact which had been fully heard and decided on the first trial. To allow this to a party who cannot allege that any error in *law* appears on the face of the decree, or that he has discovered any new evidence, or that any new matter has arisen, would be contrary to the maxim that 'no one shall be twice vexed for the same cause,' and would not be administering 'justice' or 'equity.'"<sup>3</sup> Another opinion says: "It strengthens our confidence in the justice of the country when we see a principle, so just in itself, and so beneficial in its general results, sternly and constantly enforced. Every relaxation in the rules in view of the supposed hardships of particular cases is but the opening door to the most dangerous abuses of the process of the law."<sup>4</sup> Referring to the decision in a case known as Summer's

<sup>1</sup> 7 Harris, 239.

<sup>2</sup> *Ibid.*, 413.

<sup>3</sup> *Ibid.*, 433.

<sup>4</sup> 8 Harris, 49.



appeal, he says: "In overruling it we correct a plain mistake; we affirm, as a principle not to be denied, that the judicial power is not authorized to make new and inconvenient innovations upon the rights of the people, or to alter the law of the land upon a mere 'glimmering' of legislative intent; and we replace ourselves upon ancient foundations, in accordance with the true doctrines of *stare decisis*, and in obedience to the authoritative voice of the law."<sup>1</sup>

With the advent of December, of the winter of 1852-3, the court returned to State House Row in Philadelphia to enter upon a most important session. Of the ninety-seven opinions rendered from the work of this session, Justice Lewis is responsible for twenty, and he dissented formally but twice. In one of these opinions is a rather startling expression that, it may be surmised, drew a smile from the Court: "A dead man cannot be said to refrain from drinking to excess, within the meaning of the testator," referring to a contingency, if he had lived, which would control a certain legacy—"although, in another sense, nothing is a more peremptory termination of such excesses than the solemn sobriety of the grave. Nor can it, with any propriety, be said of him that, while quietly reposing under the clods of the earth, he indulged in intemperate habits; \* \* \*"<sup>2</sup> The expression, however, was a perfectly natural part of the exposition and reasoning of the case. In another case, where a party objected to the lower court's instructions as "impairing the effect" of the counsel's argument, he said: "An affirmative answer to the points put by counsel would frequently produce an effect which would lead the jury into error. A judge is acting in the line of his duties when he accompanies his answers with such observations as are necessary to guard the jury against such a result. There are many cases in which affirmative answers to the point put by counsel, although strictly correct, as far as they go, would produce an improper effect. It is just that this 'effect' should be 'impaired' by 'pertinent observation' from the judge."<sup>3</sup> It was seldom that Justice Lewis departed from scru-

<sup>1</sup> *Ibid.*, 67.

<sup>2</sup> *Ibid.*, 244.

<sup>3</sup> 9 Harris, 72.



pulous directness in reasoning to use an illustration, as he did during this session on one occasion in reference to the rule that taxation follows domicile, when he spoke of the results and cause of Joseph and Mary's journey from Nazareth to Bethlehem. "When the decree for taxing the empire was issued, the presence of Joseph in the city of David became necessary in order that he might 'be taxed in his own city,' for 'he was of the house and lineage of David,' and the presence of Mary was indispensable to a correct registry in relation to the anticipated birth, because Roman law establishing the first census required the citizens to register the names of their wives and children. By the observance of the rule that taxation follows the domicile, Bethlehem became the birthplace of the Redeemer. This rule is of great antiquity and of great obligation."<sup>1</sup> It was at the Philadelphia session that what was called, by Chief Justice Black, "beyond all comparison, the most important cause that has ever been in this court since the formation of the government," was decided, namely, the famous Sharpless case on municipal subscription to railways, which finally caused an amendment to the constitution. The three opinions in this case were given by the three who formed the majority decision, Chief Justice Black and Justices Woodward and Knox. Justices Lewis and Lowrie "dissented vigorously."<sup>2</sup>

Shortly before the May term at Harrisburg the court lost the venerable figure that had given it more fame than any other, not excepting Tilghman and McKean. On May 3, 1853, Justice Gibson had died, and on the 9th, at Harrisburg, Thaddeus Stevens, of Lancaster, on the assembly of the court announced the fact in becoming terms. He had reached the age of three score and sixteen. "None of us," said Chief Justice Black, "ever saw the Supreme Court before he was in it; and to some of us his character as a great judge was familiar even in childhood. The earliest knowledge of the law we had was derived in part from his luminous expositions of it. He was a judge of the Common Pleas before the

<sup>1</sup> 9 Harris, 115.

<sup>2</sup> The deciding opinions are in 9 Harris, 158. The dissent is mentioned by Thomas Williams of Pittsburgh, who appeared in the case by courtesy. See "Life and Speeches of Thomas Williams, 1806-1872," by Burton Alva Konkle, Vol. I, p. 332, foot-note.

youngest of us was born, and was a member of this court long before the oldest was admitted to the bar. He sat here with twenty-six different associates of whom eighteen preceded him to the grave. For nearly a quarter of a century he was Chief Justice, and when he was nominally superseded by another as the head of the court, his great learning, venerable character and overshadowing reputation still made him the only Chief whom the hearts of the people would know. \* \* \* At the time of his death he had been longer in office than any contemporary judge in the world; and in some points of character he had not his equal on the earth. Such vigor, clearness and precision of thought were never before united with the same felicity of diction."<sup>1</sup>

The new member who succeeded Gibson was the popular jurist who had been placed on the bench of the old Tenth District to replace Judge Thomas White to quiet the agitation which did so much to precipitate the struggle for an elective judiciary,<sup>2</sup> Justice John C. Knox.

This and the next session of 1853, at Harrisburg and Sunbury, were productive of very few opinions; the former with but fifty-three, of which Justice Lewis, for some reason, gave only five—far below the average, and the latter with but ten opinions, three of which were assigned to him. Most of these opinions are excellent examples of his directness and scrupulous devotion to the exact case before him, rather than to general principles. But very few instances of expression of a general principle occurs, although on one occasion he remarked that "We must administer the law as a system intended

<sup>1</sup> Harris, 11.

<sup>2</sup> An interesting commentary on this new appointment is a letter of James Buchanan's to Judge Lewis, dated June 13, 1853. "I recommended Judge Bell voluntarily as I had done Judge Campbell. I knew him to be an able Judge, a sound lawyer, & an honest man; & I thought that the Governor would not proscribe that district in the State in which two-thirds of the business of the Court originates. Besides, I felt a little compunction, because my efforts in your favor had to some extent indirectly been the means of defeating the nomination of Bell. It is true, I knew at the time that my recommendation would not weigh a feather with the Governor, as I told Judge Bell whom I saw the day after it was sent. It now appears that it was the Judges who defeated Bell & had Knox appointed. If I desired to play the Demagogue, a thing which I have never done, I would not desire a better subject, before the people, than a Court desirous of becoming a close monopoly & perpetuating themselves by filling their own vacancies, as the Magistrates formerly did in Virginia, & a Governor submitting to their dictation & then calling upon the people in convention to sanction the deed.—But all this is far from me. I desire peace & tranquility for the remainder of my life. I have heard of no opposition to Judge Knox & I shall certainly make none." Lewis Papers. This letter is in reply to one of Lewis' stating that Knox was the choice of the rest of the court. Buchanan Papers.

to promote justice, and not as a snare to entrap the innocent.”<sup>1</sup> In a decision at Sunbury he had occasion to say: “When the law is settled, judges ought not to unsettle it, except upon the most urgent necessity. But when it is rightly settled in a way that promotes justice and accords with the public convenience, there is no justification whatever for disturbing it. But we are told that it is very hard to commit the defendant until he complies with the sentence, and that he cannot abate the nuisance while he is in prison. Doubtless it is so; but ‘the way of the transgressor’ is always ‘hard.’ The sentence was not intended so much for his convenience as for that of the public whose rights he has violated.”<sup>2</sup> It should be stated, while referring to these two sessions, that at Harrisburg he found three occasions to disagree with his fellow-justices—an unusual proportion.

The Pittsburgh session of 1853 was as productive of opinions as usual, there being eighty-three, of which Justice Lewis had his usually large proportion, namely, twenty-two, one of which was the first “additional” opinion he had been felt called upon to render. He had three occasions of dissent at this session also. “Public policy,” said he in one of these opinions, “and the interests of debtors and creditors require that sales, made under decrees of courts of competent authority, should be sustained after final confirmation. The confidence reposed by the people in the justice and authority of the judicial tribunal ought not to be made the means of ensnaring them to their destruction.”<sup>3</sup> The “additional” opinion above mentioned, i. e., an opinion concurring with the court, but stating elements that the regular opinion is believed not to emphasize sufficiently, in all probability arose from Justice Lewis’ knowledge of medicine and surgery. After stating how a surgeon is taught to treat a broken bone so that the limb shall preserve its normal length, he says: “Entertaining these views of the case, I am bound to say that the plaintiff in error has failed to satisfy me, either upon philosophical principles or by surgical authority, that the means made use of for the purpose of producing ‘extension and

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<sup>1</sup> 9 Harris, 448.

<sup>2</sup> *Ibid.*, 531.

<sup>3</sup> 10 Harris, 202.

counter-extension' were adequate or even proper for the purpose." He then analyzes the course that was taken by the surgeon much to the disadvantage of the latter and in a way that even the layman can comprehend. This medico-surgical knowledge, which, however well it bore upon justice in the original trial, was too much for Chief Justice Black, who closed the matter with a remark bordering on asperity. "We are not authority on questions of surgery. Our hands are abundantly full of questions which belong to our profession, without volunteering opinions on sciences which relate to others. I think it necessary to say this in order to prevent the court below on second trial from supposing that we intend to give them any instruction on matters in which we have no jurisdiction. But this is my own opinion, for which no other member of the court is responsible."<sup>1</sup>

A very good example of how Justice Lewis sustained conservative principles occurred at this session. "This decision," said he, "has never been reversed, and the argument by which it is sustained by the lamented jurist by whom it was delivered has never been satisfactorily answered. The public and professional confidence in its soundness has been so unhesitating and abiding that it has regulated the practice throughout the state. In the Eastern District it is necessarily regarded as a binding authority. In the Western District no opinion which the District Judge, or any other single judge might have entertained, could be expected to overthrow its influence. The ability with which the opinion is maintained, the great eminence of its distinguished author, and the justice and public convenience which it tended to promote, commanded the general respect and acquiescence of the community. It has governed in the purchases and sales of land derived through proceedings in bankruptcy for the last twelve years. Many titles and extensive landed interests depend upon it. To overthrow it now, and to pronounce all these titles void, would be a most unjust proceeding, which would spread consternation and ruin throughout the state. We are perfectly aware of the existence of opinions in favor of enlarging the jurisdiction of the United States Court,

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<sup>1</sup> 10 Harris, 273-4.

and extending, by construction, the operation of the Act of Congress. But we affirm, without fear of contradiction, that if the construction, now claimed by the plaintiff in error as the true meaning of the bankrupt law, had been engrafted upon it at the time the bill was under consideration in Congress, it never would have received the sanction of that body."<sup>1</sup>

The closing year of the Chief Justiceship of Black began with the session at Philadelphia in the winter of 1853-4. Eighty-four opinions were the result of this term, and to Justice Lewis fell almost exactly his share of them, namely, seventeen, and he dissented from his brethren but once. Lewis had a pride in the Pennsylvania system of jurisprudence, and more than once took occasion to express it. In one instance during this session he said, after describing the English course in such a matter: "But in *Pennsylvania* we have no occasion to lament the want of power to do justice. The Courts have, by the constitution, the power of a court of chancery in cases of that kind."<sup>2</sup> In another case he touches upon the field of art in the Academy of the Fine Arts' taxation case. "It is true," said he, "that the arts of *painting* and *sculpture* are refining and elevating in their tendencies. They advance the fame and fortunes of all who are qualified for the beautiful creations which belong to them. Like the kindred arts of poetry and music, they furnish 'a joy forever' to those whose tastes invite, and those whose circumstances permit them to drink at the Castalian fountain. But we make but indifferent progress in the improvement of our moral sentiments if we desire to reach the pleasures and the profits of these refinements at the expense of others, whose tastes lead in a different direction, or whose circumstances preclude them from participating in such gratifications. \* \* \* \* The Academy of Fine Arts presents us with pictures of life, *with action*. The Academy of Music, with its proposed opera, may furnish us with pictures of life *without action*."<sup>3</sup> We may differ in our estimates of the merits of these institutions; but we do not perceive much ground for any difference of

<sup>1</sup> 10. Harris, 411.

<sup>2</sup> *Ibid.*, 469.

<sup>3</sup> The ascription of "action" to Painting and not to Music, especially opera, is no doubt a slip of the pen, and probably was intended *vice versa*.



opinion on the question whether it is just to wring from the labors of those who derive but little pleasure or profit from them the taxes necessary for their support. The public charges are already onerous. We are not prepared to increase them—for purposes in which the people at large have but small interest, until the legislature shall direct us to do so in language not to be misunderstood.”<sup>1</sup>

In view of Justice Lewis’ services to the debtor class during his public career, an expression on this subject is of interest. “Notwithstanding the benevolent provisions of the statute in favor of unfortunate and thoughtless debtors it was far from the intention of the legislature to deprive the free citizens of the state of the right, upon due deliberation, to make their own contracts in their own way, in regard to securing the payment of debts honestly due. Creditors are still recognized as having some rights; and it was not the intention of the legislature to destroy them by impairing the obligations of contracts. It frequently happens that the creditor is more in need of public sympathy than the debtor. When a poor man is unjustly kept out of money due to him, the distress arising from the want of it is often greater than that caused to the other party by its collection. If the suffering was but equal, it is plain that one man should not suffer for the follies or misfortunes of another. Every one should bear his own burthen.”<sup>2</sup>

“We should never forget,” said he in another opinion, “that judicial tribunals are established for the purpose of administering justice,”<sup>3</sup> and such a reminder often served to raise the tone of the whole case.

During the Philadelphia session of ’53-4 he received some interesting letters from Minister James Buchanan, in London, who was one of his most intimate friends at Lancaster. “Pray write me a long letter,” Mr. Buchanan says in a letter of December 9, 1853, “& give me a gossiping account of all matters & things relating to Lancaster, the world in general, & ‘the rest of mankind.’ I am sadly in want of such information. \* \* \* I believe I shall be able to give you a favorable

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<sup>1</sup> 10 Harris, 499.

<sup>2</sup> 11 Harris, 94.

<sup>3</sup> *Ibid.*, 170.



introduction to the Sages of the Law, when you visit England next summer. It has so happened that the Lord Chancellor & the Chief Justice of the Queen's Bench, particularly Lord Campbell, have treated me with great civility & kindness since my arrival in London. The latter has given me a special invitation to visit the Queen's Bench, where he says I shall be received with distinguished honors. What he means by this I do not understand. We have had no conversation on any legal subject, except what incidentally arose from a question of mine as to the period when Lord Holt was Chief Justice in which I had a meaning. This induced him to speak of the decision in the case of *Coggs v. Bernard*, in which rusty as I am I felt at home. I then asked him if he was aware that Lord Holt had decided that under the law of England negro slaves were merchandise. This was after we had risen from the table of the Duke of Newcastle, where Mrs. Stowe, her book & American slavery had been a subject of conversation. Upon that occasion I spoke right out & was agreeably surprised to find that most of the gentlemen at table concurred with me in opinion as to the impropriety & the consequences of their interference on the subject.

“‘Tis distance lends enchantment to the view,’” he continues. “In the power & facility of general conversation, I would be willing to stake Wheatland that the Chief Justice & yourself would excell the Lord Chancellor & the Lord Chief Justice. It is true that in general society they are too polite to converse upon professional subjects where I have no doubt they would find themselves at home. The official costume of the Judges of the Queen's Bench,—large crimson gowns, is truly ridiculous. That of the Chancellor & Vice Chancellor is far richer, though but little more becoming. In a plain suit of black, I met the Grand dignitaries, at the Lord Mayor's dinner, all arrayed in their official robes. If I were twenty years younger, I have no doubt I should be much pleased with a residence at this court. As it is, I shall endeavor to make the best of it. My heart, however, is still in my native land; my dream of life is, that I shall pass the remnant of my days,

should a merciful Providence prolong them, in retirement at Wheatland. I would now rather have a conversation with Alderman Kautz than with the Lord Chancellor of England.

"A few days ago," the letter continues, "I went to pay a visit to the Marchioness of Wellesley & Lady Stafford at Hampton Court. The former was very ill with dropsy & I did not see her. The latter, I found in much trepidation, in consequence of a notice which she had just received through the official papers of the court to appear before you on the first Monday of January. [Here follows a half page of obliterated matter and the following marginal explanation of it: 'I obliterate this not because there is anything objectionable in it; but because I have always felt an abhorrence to make allusion to a Judge about a case before his court, even without expressing any opinion.'] They asked me to recommend an agent for them for their lands in Pennsylvania & I suggested the name of our friend Christopher L. Ward. These ladies have experienced an astonishing fate. They have all married titled noblemen; & no lady stood higher or was more respected at court than Lady Wellesley. Being the sister-in-law of the Duke of Wellington & a great favorite with him, she has amused me very much by relating private anecdotes of that remarkable man. She is now a widow, in a dying condition & has scarcely income sufficient for her support in the rank to which she has been accustomed. Lady Stafford is, also, a widow & is a fine woman; but neither she nor the Duchess of Leeds is at all equal to Lady Wellesley. I like them all for the strong & ardent American feeling which they still retain. I have no doubt, they would have been happier had they remained at home & married independent & worthy American gentlemen. But enough & far more than enough of this.

"The English," he continues, "just reverse our custom in regard to Town & Country life. The nobility & gentry visit London only in the summer. The season, as they call it, commences a few weeks after the meeting of Parliament in February & terminates with its adjournment, in the beginning of August. All the

rest of the year they are upon their estates or roaming over the continent. If you happen to meet one of them, he will tell you that there is now nobody in Town—a town which contains two millions & a half of people. They are great sportsmen; men & women are devoted to exercise in the open air, both on foot & on horse back. Their ladies are more robust & healthy looking than our own; but they are deficient in that delicacy of beauty for which our countrywomen are so distinguished. Of course the ministers & officials of the crown & Judges of the court must be in London, after the 1st of November; but they all have a time of it in the country from the adjournment of Parliament up till that day.

"I wish I could change the habits of our ladies," continues this distinguished bachelor minister to St. James, "& induce them to take more exercise in the open air. This would contribute both to their health & their beauty. You never see a lady here on the street in full dress. With thick shoes & warmly clad, they move at a rapid rate. I am persuaded that the mass of the people are far, very far behind our own in almost every respect. The rate of interest & the rate of wages are now so high here, that our manufacturers have but little to fear. The emigration of laborers to America & Australia have produced this effect on labor; but it is a problem which I cannot solve, why money should be so scarce throughout all the commercial nations of the world, notwithstanding the immense production of gold in California & Australia. Negotiations here in new Rail Road Bonds are at an end for some time to come. \* \* \* \* \* Your friend, James Buchanan."<sup>1</sup>

During the winter of 1853-4 Justice Lewis removed to Philadelphia—the region which, even then, as Buchanan had said, furnished two-thirds of the business of the court. The judicial vicinage was the region of "State House Row," but Justice Lewis finally decided to go somewhat "out of town," and sought a home on the west side of the park at Penn Square, a house which bore the number "20" on the block called "West Penn Square"—now the east front of Broad Street Station,

<sup>1</sup> Lewis Papers. Judge Lewis gave him a "gossipy" letter on January 5th, stating that he would be in his "N. W. Penn Square" home in March. The letter is so interesting that the author regrets the demands of space prevent his giving it in full.

of the Pennsylvania Railroad.<sup>1</sup> He had replied to Mr. Buchanan's letter at once from Lancaster, and the latter wrote him again from 56 Harley Street, London, on June 2nd, 1854. "I regretted very much to learn from Miss Lane," said he, "that you had removed to Philadelphia. I had anticipated many a pleasant & instructive hour with you at Wheatland and in Lancaster. This is another link at least partially broken. [He then refers to the death of a friend there.] I have but little to say in regard to myself. 'The London Season,' as it is called, is now in full blast. The nobility & gentry of England never consider London as their home. They come up here for about three months each year between Easter & the adjournment of Parliament & turn the town upside down. We have dinner parties every day at 8 o'clock & evening parties every night; & between the dissipation & late hours I am nearly done over. When the season ends, which thank Heaven it will do in about four weeks, the fashionable crowds disperse to their homes in the country, &c., &c., & we shall hear little more of them until next spring. I go out far more than I would on account of Miss Lane.

"You will be Chief Justice next year," he continues, & then I hope you will pay us a visit. I shall be most happy to introduce the C. J. of Pennsylvania to the high dignitaries both of the law & the Church in this country, as a gentleman eminent both in the legal & theological sphere. My time will not be up till August, 1855. I dined yesterday with the Lord Bishop of London at his Palace of Fulham. It is an old & magnificent structure for a successor of the poor fishermen. In conversing about the church with him & the Bishop of Winchester, I could not resist the inclination which I felt to condemn the practice prevalent here of selling church living—the *care of souls* at public auction to the highest bidder. This cannot be done if the incumbent is dead & a vacancy actually exists. The sale must be made in the life time of the incumbent; & then as inducement to the bidders the advertisements often state that he is old, mentioning his years & in feeble health, holding out the prospect of a speedy vacancy. The Bishop evidently did not

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<sup>1</sup> He is not given in McElroy's Philadelphia Directory as at 20 West Penn Square until the issue of 1856, which was made up in 1855, no doubt.

approve the practice, though he was cautious in expressing his opinions. He said that all they could do was to take care not to ordain any unworthy clergyman. An attempt has been made in Parliament to abolish this practice; but it was successfully resisted, because it would be an interference with private property!

"The war lingers on," the letter proceeds, "& I can truly tell you no more about it than what you see in the public journals. John Bull is fond of a fight & to do the old gentleman justice, he bears himself right manfully in the contest. This war is still very popular; but he is at some loss to know precisely for what he is fighting. He has a formidable enemy in the Emperor of Russia. They now begin to discover that it will not be easy to take Cronstadt & Sebastopol. The other day at a dinner I was asked my opinion of the result & told them I would give it concerning the nature of the contest in the words of one of their own poets:

"Now gallant Saxon hold thine own,  
No maiden arm is round thee thrown,  
That desperate grasp thy frame might feel  
Through bars of brass & triple steel."

—They have behaved well in regard to their declaration in favor of neutrals' rights & they no longer think of impressment. Indeed public opinion would not for a moment endure a Press Gang in the country. I had some agency in these matters. \* \* \* \* \*

\* Your friend, James Buchanan."<sup>1</sup>

But while Justice Lewis' distinguished friend in London was preparing to join with his fellow-ministers to France and Spain the following autumn in the famous announcement regarding a proposed purpose of the United States to secure Cuba at all hazards, known as the "Ostend Manifesto"—a program that was calculated to land Mr. Buchanan in a stormy Presidential chair instead of the seclusion of Wheatland for which he expressed great longing, Judge Lewis was deeply engrossed in the cause of justice in the session at Harrisburg. The opinions of this session were fewer than usual, reaching the number of but forty-eight, with the eleven assigned to Justice Lewis, and the first absence noted in the

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<sup>1</sup> The Lewis Papers.



course of his term. "Where all the competitors arrive at the goal within a few minutes of each other, the race is too close to concede to either any merit on the ground of superior vigilance," said he in one of these. "The presumption is that the debts are all equally just, and if so, the principle of equity requires that they should all participate equally in the remnant of their debtor's property. So that the introduction of the fractional principle, so far from being justified by unavoidable necessity for the purpose of doing justice, would be productive of the gross injustice of giving a monopoly of the assets to one creditor, to the exclusion of other claims equally just. Thus the wholesome principle of the common law would be departed from for a purpose which a chancellor would never lend his aid to accomplish."<sup>1</sup> In view of later attitudes toward competition one of these opinions is an interesting commentary: "It is the policy of the law to promote competition, and thus to produce the highest and best price which can be obtained."<sup>2</sup>

The opinions of Justice Lewis seemed to grow more and more strictly professional as these years passed, so that it is with great difficulty that parts of one of them may be properly separated from the context. The close texture of the reasoning and its limitation to the immediate point of issue, while adding to the perfection of their technical character and making them ideally learned in law, increase their interest for the professionally interested rather than for the general student. So many of his opinions at this period are of this nature and are such models of precision and close logical texture that the question arises whether the interest of the reasoning might not overcome the disinclination of most minds to unfamiliar technicality—as it certainly would to those minds which enjoy clear logical process wherever used. An ordinary example of this, selected only because it refers to the structure of the court itself, is the following: "This case came before us at the Middle District, on a writ of error directed to the Court of Quarter Sessions of Allegheny County. As that county is part of the Western District, a question arises in relation to the power of this Court to hear and determine the cause

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<sup>1</sup> 11. Harris, 301.

<sup>2</sup> *Ibid.*, 310.



out of its proper place. It is true that the parties do not raise the question; but as their consent cannot give jurisdiction, we are bound to ascertain, before we proceed, how far we have authority over the case. By the fourth section of the fifth article of the Constitution, it is expressly declared that the 'jurisdiction of the Supreme Court shall extend over the State.' As the Constitution itself fixes the extent of our jurisdiction, it is plain that an Act of Assembly cannot contract its limits. But the Act of 14th April, 1834, dividing the State into districts, was not designed to circumscribe the jurisdiction of the court. The object was merely to give suitors the privilege of having their cases heard within convenient distances from the places in which they originated, and, where, generally, the parties are presumed to reside. This, like any other advantage, may be waived with the consent of the Court. There is nothing in the statute which is repugnant to such a waiver. The Act of Assembly requires the Supreme Court to be held at stated times annually in the several districts. This has always been done; so that the statute, in that particular, has been satisfied. But justice may sometimes require that a case be taken up out of its proper district. A delay which works irreparable mischief is sufficient to call for the exercise of this power, under the constitutional injunction that 'justice shall be administered without denial or delay. So, an abuse of process or a mistake in entering a judgment has been deemed sufficient to justify the interference of the Court, although, at the time, not sitting in the district where the mistake or abuse occurred. In one instance we have made an order in the Eastern District to grant relief against process issued on a judgment erroneously entered in the Western District; and it is a common practice to pronounce judgment in one district on causes originating in another. In the case now before us, as the parties make no objection, and as our jurisdiction over them and over the subject matter in controversy is not doubted, the propriety of exercising it in the manner proposed is to be decided by considerations of expediency alone. As the punishment imposed by the sentence would be fully suffered and ended before the cause could

be reached in the ordinary course, and this would produce injustice, if erroneous, for which there is no adequate redress, we deem it our duty to proceed to the examination of the record returned."<sup>1</sup>

The Sunbury session was decidedly short in 1854, the entire list of opinions produced by it being but eleven, with but two of these and an "additional" opinion credited to Justice Lewis—a condition which may have been due to the fact that he dissented in two other cases. The "additional" opinion is so characteristic that it is given entire: "The object of a sheriff's sale is the conversion of the debtor's estate into money for the payment of debts. It is the policy of the law that the highest price should be obtained at the least expense. It is against the interest of debtors and creditors that the property should be sold for less than its value, or that the proceeds should be eaten up by the cost of unnecessary proceedings. Common humanity requires that the misfortunes of life should not be aggravated by such harshness, and common justice demands that legal proceedings should not be made a snare for innocent citizens who repose confidence in them. When the officers of the law sell the real estate of a debtor for the price publicly bid for it, it is unjust to exact anything more than the sum thus agreed upon to be paid, or to deprive the purchaser of the benefit of his purchase, by means of encumbrances not understood to be continuing liens. Such an act in an individual would be condemned as fraud. It loses none of its turpitude by being clothed in the garb of public authority. Even the boasted omnipotence of Parliament cannot change the code of morals, and make that just which is in its nature absolutely wrong. In accordance with these principles, it was the settled law, in regard to judicial sales for the payment of debts, that the parties interested were not put to the expense of any more than one sale—that such a sale worked an absolute conversion of the property into money, and consequently discharged the land in the hands of the purchaser from all encumbrances which in their nature admitted of being reduced to certainty in amount. It substituted the proceeds for the land, and

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<sup>1</sup> 11 Harris, 362.

gave to the lien-creditors a claim on the fund instead of their liens on the land. The salutary effect of this rule was, that it encouraged competitors at such sales, and property brought its full value. The plain business man could bid with as much safety as the more wary speculator. Thus, all parties interested in the property derived the full advantage of its conversion into money. But the Act of 1830 changed this policy so far as to protect the holders of mortgages, having prior liens, from sales under judgments entered subsequently. Under that statute several sales are necessary where one was sufficient before. Whether the title or a mere equity of redemption is sold, depends upon circumstances not always known or easily ascertained at the sale. Hence, no one can safely bid at a sheriff's sale without previously examining the records for judgment, mortgages, and other liens not only against the defendant in the execution, but against all persons who had ever before had any interest in the property. Few men are willing to put themselves to the trouble and expense of these searches on a mere possibility—that they may become the purchasers. The field is therefore abandoned to those who follow the business of making profit out of the misfortunes of their fellows. These men generally obtain their purchases at a price so low as to indemnify themselves against the risks they encounter. But if a creditor, anxious to secure his demand, or a business man, desirous of obtaining a place for his business, or a home for himself and his family, ventures to run the property up to its value, he frequently discovers, after it is too late to recede, that a mortgage exists against the property which sweeps it away from him after he has paid all that it is worth.

“Many innocent men have been ruined by the purchase of property at judicial sales since the Act of 1830. After ten years' experience of the evils produced by that Act, the Supreme Court, in 1840, declared that ‘the consequences of the Act, wherever we have had occasion to observe them, have been disastrous.’ 6 *Wharton*, 216. After fourteen years' further opportunity to witness the operation of that statute, we are compelled to bear the same testimony against it. Under its provisions no un-

learned man can with safety bid at a judicial sale. It was therefore very properly held in *Berger v. Heister*, 6 *Wharton*, 214, that 'the disastrous consequences of the Act is a legitimate reason why it should not be pushed beyond the supposed mischief;' and, in the same case, it was distinctly declared that the design of the Act was to protect the mortgagee from the intermeddling of subsequent creditors,' and that 'a judgment-creditor *who is himself the prior mortgagee*, was not to be deemed a subsequent creditor within the purview of the statute, or, *in his capacity of mortgagee, an object of protection against himself.*' 'When he appears in a double capacity,' it was held, 'that a case has arisen which was not contemplated nor consequently provided for.' 6 *Wharton*, 216. Although the authority cited was the case of a sale on one of the mortgage bonds, it was declared that this made no difference—that the consequences would be the same were the securities arising out of different transactions; and the case was put upon the impregnable ground that the Act was not intended to protect the mortgagee against himself—that *the sale was by virtue of a judgment under his own control*, and that by not *proposing to sell subject to his mortgage he was taken to sell discharged of it*: 6 *Wharton*, 216. That principle settles the case before us. It is, in my opinion, the true meaning of the statute. We have, therefore, sound principles as well as binding authority in support of the justice of this case. The property in question was sold by virtue of a judgment under the control of Dr. Gibson, the mortgagee, and it was not offered for sale subject to the mortgage. He must therefore be taken to have sold discharged of it. The purchaser took a clear title, and the proceeds should be distributed among all the lien creditors according to their priority. If the sale were held to be within the operation of the Act of 1830, the result would be that the owner of the property must lose the use of it for a year, and must pay to those who thus wrong him the sum of \$1500 to get it back; and those who purchased it and agreed to pay for it, instead of fulfilling their contract, are allowed a premium for violating it! Justice forbids the sanction of such a gross iniquity. In my opinion the proper way to do justice in this case is to

enforce the true construction of the Act of 1830 by holding that it was not designed to protect mortgagees against their own acts. But, without affirming or denying the soundness of this construction, the majority of the judges have determined to relieve the mortgagee from the hardship of his case by sending the cause back with such directions as will enable the Court of Common Pleas to set aside the sale. As a general rule, ignorance of the law is no ground for relief from the obligation of a contract. But where the contract is made in some sort with the court themselves, and where the highest of these tribunals has actually represented that the purchaser, under circumstances like those existing in this case, would take the land discharged of encumbrances, either that representation ought to be carried out, or the purchaser, acting on the faith of it, should be relieved. Failing to secure the first, I resort to the second as the only alternative left. For these reasons I concur in the decree."<sup>1</sup>

With the Pittsburgh session of 1854 comes the last one under the Chief Justiceship of Jeremiah S. Black. The session produced forty-one opinions, or forty-two, if one of Justice Lewis' is included, which was carried over to the next term. Of these, counting the last mentioned opinion, he delivered twelve, which was more nearly his usually large number. "It is impossible to administer justice," said he in one of these opinions, "by giving mere isolated responses to points unconnected with the facts of the case. If a plaintiff in error may demand a response on one abstract principle he has the same right in respect to all other questions of law, whether they arise in the case or not. To permit such a practice would be to place the time and attention of the judicial tribunals at the disposal of any one who chooses for his amusement or instruction to put interrogatories, and would unnecessarily vex the parties by exposing their judgments to the danger of reversal for immaterial errors. Courts of justice are established to determine controversies actually existing, not to decide abstract principles."<sup>2</sup>

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<sup>1</sup> 11 Harris, 513.

<sup>2</sup> 12 Harris, 75.



## CHAPTER XII

### HE SUCCEEDS JEREMIAH S. BLACK AS CHIEF JUSTICE

1854

With the approaching expiration of the three years' term of Chief Justice Black in 1854, he was at once nominated for reelection as a Justice on the same bench, and the voting in October restored him to the court for the full fifteen-year term, but not to the Chief Justiceship. The latter office, stripped of its ancient glory, as the late Chief Justice Gibson believed, and as many others likewise thought, automatically fell to the Justice having the term next in length to the three years' term, namely, the six years' term which the drawing of lots had given to Justice Ellis Lewis. When the result of the election was known Governor Bigler wrote Justice Lewis saying, in part: "You, Ellis Lewis, one of the Judges of the Supreme Court, are hereby notified that by virtue of the foregoing provisions of the Constitution and the forms thereby prescribed you are the Chief Justice of the Supreme Court of Pennsylvania and entitled to that rank from Monday the 5th of the present month until the expiration of your commission."<sup>1</sup> This was dated for December, but was sent on November 27th, with the following letter: "I have commissioned you as Chief Justice in the room of J. S. Black and have sent an announcement of the fact to the *Pennsylvanian*. It will appear in the next number. I have said about you just what I pleased for I am just now in a condition to [be] very independent."<sup>2</sup> The "commission" was merely a private letter of notification from the Governor, unattested by the Secretary of the Commonwealth, and in no proper sense a "commission," as Justices Lewis, Lowrie and Knox believed. It was plainly stated in 4 Harris' Reports that Judge Black had been "commiss-

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<sup>1</sup> Partial copy among the Lewis Papers.

<sup>2</sup> Original among the Lewis Papers. This notice appeared as an editorial and was very complimentary.



sioned as Chief Justice for the term of three years," and, the court not being in session Justice Lewis communicated with the above fellow-Justices, who were conveniently at hand, and, concluding that the existence of a Justice's commission had caused the Governor to think a notification sufficient and they believing otherwise, prepared a legal form to supplement the Justice's commission, reciting the facts of the notification, but "declaring," says Chief Justice Lewis, "that by virtue of the Constitution *there is granted* full power &c. as in a regular commission."<sup>1</sup> This Justice Knox took to Governor Bigler and argued for its issue about Decem-ber 1st.

About the time the Governor received this communication from Justice Knox, he also received one from ex-Chief Justice Black, dated November 25th, at Somerset, as did Judge Lewis also. The one to Judge Lewis indicates the substance of the other: "I have been told," Judge Black's letter reads, "that you have requested the Governor to give you a commission as Chief Justice of the Supreme Court. I object to this for several reasons some of which I will state. It is unconstitutional and illegal. You have a commission. That is the only one you are entitled to. The power of the Executive was *functus officio* with reference to your election when that was issued. You are C. J. by virtue of the fact that your term of office expires first. You were elected a Judge of the Sup. Ct.—and the Governor has no right to commission you for anything else. Johnston asked me if I should be commissioned as C. J. and I said no. I would neither be commissioned nor sworn for an office I was not elected to. Harris says somewhere in one of his books that I was commissioned as C. J. but he is not authority & it is not true. But all I could say about law and constitution you know as well as I do.

"I have another objection," he continues. "It will expose you to imputations which if you knew them would be unpleasant. It will prejudice your reputation for manliness & good sense. You have talents and learning which will honor any judicial place you occupy.

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<sup>1</sup> Statement by Chief Justice Lewis among the Lewis Papers.

If you look to those qualities and to them alone for character you will never be disappointed. But it is right for me to tell you in all candor and friendship that many persons—a majority I think—expect you to be much elated with the consciousness of being at the head of the court—that you put a wonderful value on that empty title—and that you are perfectly ‘ravished with the whistling of a name.’ I have heard very much of this since our last adjournment and something of it was said in the far West. You assured me at Pittsburgh that it was not true and I denied it on your authority. But how would I be able to explain your anxiety to get a void commission which you and everybody else knows can have nothing in it but the mere *sound* of the title? I say *sound* for the title itself, empty as it is, comes in another way. A thousand eyes will be on you and if you open your new career with an act like this, every one will explain it by your supposed peculiarities of mind. But if you will take your place as a matter of course and as a duty you disappoint them and excite more admiration than you could do by causing a thousand trumpets to be blown before you.

“I object to it,” he further continues, “on Bigler’s account. We need him as one of the supporters of the Constitution. We cannot afford to have him weakened by such a violation of it. If it were done to secure a great object it might be *borne*. But this is a purpose which has less in it than nothing and the act would be clearly wrong without a thing to redeem it. Bigler must not do anything inconsistent with his past history and what is expected of him in the future. These are times when every friend of the Constitution must husband every atom of his power. You will think (I fear so at least) that this is none of my business. But I am a free citizen of the State and have a right to speak of public matters—I am a member of the Supreme Court and am concerned in its character—I am a believer in the Constitution and will not see it violated in any particular without protest. I have but one more suggestion to make. Does not the taking of a new commission imply a surrender of the old one? Certainly there is no way to answer this except by the humiliating

confession that the new one was taken for the mere name of the thing. But suppose the new administration should take the other view of it a *quo warranto* would be an ugly thing, would it not? Collins was destroyed, Darlington was killed & Gibson's life was embittered by accepting new commissions. But they walked over the Constitution and gave some dignity to their breach of it by doing it for a substantial purpose—to add time and power and emolument to their public life—not merely to make their titles more sonorous. Pollock and his Attorney General would have a triumphant party and the sympathies of thousands of democrats to back them. The other members of the Court might stand like Horatius at the head of the bridge and break back the host alone—that is, perhaps they might and perhaps not, for may be the law as well as public opinion would be against you. In any event the discussion of the subject would injure us and you while it would do our adversaries great good. They are not such fools as to misunderstand this advantage. I have said my say. You may differ as much as you please. But do not be offended if I express my opinion at another time and place more at length and more emphatically than I have done here. Mayhap you don't believe it but it is true nevertheless that I am your friend and well-wisher—J. S. Black.”<sup>1</sup>

Evidently ex-Chief Justice Black felt deeply on the subject and his colleague, Justice Woodward, likewise dissented from the unofficial opinions of Justices Lewis, Lowrie and Knox, for Judge Woodward also addressed the Chief Justice a letter, of the very same date, December 2nd: “Dear Judge,” he begins, “I hope you have not accepted the new commission. I have looked at the constitutional amendment and the Acts of Assembly and it seems to me that they displace the old law—and that according to them no one was to be commissioned as Chief Justice, but that among those commissioned the Chief Justice was to be determined by the *duration of existing commissions*—the shortest to be Chief. This I say is the way it *seems* to me tho’ I differ from your clear conclusions with great deference in this instance

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<sup>1</sup> Lewis Papers. This letter was only a temporary ebullition; they were as good friends as ever soon afterward.

as in all others. But suppose you should chance to be wrong—having surrendered the old commission & taken the new, would you not be out of office? A doubt on this point makes me hope you will not accept the new com'n."<sup>1</sup>

The Governor, however, argued the matter, in his letter to ex-Chief Justice Black on December 2nd, as follows: After noting Black's objections he said, "The correctness of this opinion must depend very largely on what is meant by a commission. An official evidence of facts that are matters of record in this Department, could, it seems to me, work harm to no one; and could by no possible construction be held as a violation of the Constitution. A commission, in this instance, would be the mere evidence of facts. It could neither make nor unmake a Judge—it could not add an hour to the tenure of his office, diminish or extend his duties, nor add one iota to the honors or dignities of the station. It can but be a mere abstract form or recital of the records which constitute the true evidence of the election under the laws and Constitution. In issuing it the executive performs but a ministerial duty. The officer not being appointed by the Governor were he to neglect or refuse to issue a commission, the person elected would be none the less entitled to the office; though his performance of the duties might be disputed. Were a dozen of commissions issued they would all state the same facts, and that certainly could not violate the Constitution or be in derogation of the laws. Were a Governor to attempt to confer by commission powers and prerogatives not recognized by the Constitution or otherwise inconsistent with the laws, he would be guilty of misdemeanor and the commission would not be worth a straw. It would be a lie and a nullity, and whilst it might do no harm to the public the act would reflect great disgrace upon the officer. But nothing of this kind has been contemplated for a moment, nor has it been contended that a commission should be issued to supersede that already issued, or that could in any way conflict with it.

"With the limited reflection I have given this subject," he continued, "I am not entirely clear as to what

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<sup>1</sup> Letter among the Lewis Papers.

is right and proper. I incline to the opinion, however, that the commissions are not issued in the proper form and that your advice to Governor Johnston was wrong. They ought to have recited the exact words of the Constitution—that the judge holding the oldest commission should be entitled to the rank of Chief Justice. You say that you were not elected to the office of Chief Justice. I think you were. I think you were under the obligations of an oath to discharge the duties of that station just as clearly as if you had been so denominated on the ballots that elected you. But this is unimportant.

“Whilst I do not incline to the opinion that a formal commission is necessary, I do think it entirely proper that a formal notice be given whenever the contingency provided for by the Constitution shall occur. Most certainly the record in this office should be complete and should constitute a ready indication to those who shall come after us who filled this important office at different periods of time; and I can see no reason why the individual should be deprived of the tangible evidence of a fact that may be so very agreeable to his posterity. Under the present practice should no record come into existence, and as you say, Harris’ Reports are not good authority, there will be no record of the fact in the public Archives.

“Besides,” he continues, “the individual holding the place should have evidence in his possession of the right to do so. You say the Constitution furnishes evidence of that fact. So it does, and the laws and the election returns, with the Constitution furnishes the evidence that the individual was made a Judge, and thus your argument is good against any commission. Were the right of Judge Lewis disputed, he would be obliged to send here and procure a copy of the allotment, and then show by virtue of the Constitution and the age of his commission, that he was entitled to the place. If a notice be issued by the Governor whenever the contingency provided for in the Constitution arises, and that notice be recorded here, it will make a plain record for the State and a ready witness for the individual holding the office. If I comprehend you rightly, this would not



IN THE NAME AND BY THE AUTHORITY OF THE COMMONWEALTH OF PENNSYLVANIA



WILLIAM BILLET  
Barren Commonwealth

Mr. Lewis

Thomas, of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...

*And Mr. Wadsworth has written me saying that he  
will send me a copy of his book, "The History of the  
People of the State of New York," which I will send you.  
He also writes me that he will send you a copy of  
the "History of the People of the State of New York."*

*And whereas*

[illegible]

SEVEN weeks we have now the Great light of the Holy & Purifying  
the fifth day of December in the year of Our Lord One thousand eight hundred and  
fifty four one of the five years with the Lord Jesus.

By the Secretary

Friday 11 June 1882

THE COMMISSION OF CHIEF JUSTICE ELLIS LEWIS,  
the first commission of a Chief Justice under the elective system,  
in possession of Miss Josephine Lewis, Philadelphia





conflict with your views. Sure I am that such a simple statement of truth can harm no man.

"I enclose a copy of the notice sent Judge Lewis. When you all meet at Philadelphia, you can talk the subject over, and see what is deemed best. You are in error as to Judge Lewis having asked me for a commission as Chief Justice. The idea was suggested to me by Judge Knox, and taking Harris' Reports as true, and your commission as a precedent, it is a wonder I did not at once issue a broad, full and formal commission. You will pardon what may seem crude in this, for I have written in haste, and with but little reflection. I esteem your good opinion too highly to be willing to hazard it in a matter of no more moment than that which I have just been considering."<sup>1</sup>

When the Governor received the form of commission approved by Chief Justice Lewis and Justices Lowrie and Knox, he made a proper copy on December 5th, but did not forward it until the court had had abundant time to consider the question. Chief Justice Lewis, through delicacy or for some other reason, omitted to return the notification form, but on January 3, 1855, did so, stating that he had omitted it. The result was that the commission proper, reciting, first, that Lewis was elected Justice in 1851; secondly, that a commission was issued then; thirdly, that the Constitution provided that the Justice whose commission shall first expire shall be Chief Justice; fourthly, that Black's term had expired and that Lewis was entitled to the office of Chief Justice; and finally that because of these facts Lewis was now granted all that pertained to the Chief Justiceship for the term of three years, was issued thus complementing his commission as Justice, so that he possessed both commissions—a custom which has now prevailed for over a half century with none of the disastrous results apprehended by the distinguished ex-Chief Justice, although it has caused him to be the only Chief Justice in the history of Pennsylvania who received no commission as such.<sup>2</sup>

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<sup>1</sup> Copy sent by Governor Bigler to Chief Justice Lewis.

<sup>2</sup> Both these commissions are in the possession of Miss Josephine Lewis, Philadelphia. The commission as Chief Justice is reproduced in reduced size herewith. It is interesting to note that the oath of office inscribed in form on the back of it was taken before Justice Lowrie.

The Supreme Court of Pennsylvania has often in its history been without a fixed home, compelled to use temporary quarters or an ordinary court-room not in use by the local court. It was so at this time. Its old quarters had been given up by Councils to District Court No. 2 at Sixth and Chestnut, and it was proposed to send the Supreme Court to Spring Garden Hall, which was then in the consolidated city. There was some objection to the latter project for many reasons, one of them, voiced by Justice Woodward, being that the law meant that the sessions should be held in the old city of Philadelphia.<sup>1</sup> Room No. 5 had been the *Nisi Prius* court-room in which these sessions were held by members of the court, and opposite this room in the Court House, at Independence Square were rooms devoted to the Grand Jury and District Attorney which Councils had arranged to put in order for the Supreme Court *en banc*. As it would take some time to make the alterations, it was declared that that court at its December session, with Chief Justice Lewis presiding, should use the *Nisi Prius* room, No. 5, until the alterations were complete.<sup>2</sup> It was at a *Nisi Prius* session held by Lewis and Woodward in No. 5 that an opinion was rendered by Chief Justice Lewis which was looked upon as one of the most notable of his opinions as a member of the Supreme Court.<sup>3</sup> This was in the case of William Thomas v. James Crossin et al., an opinion in *Nisi Prius* of which he was the sole author, although Woodward concurred. In an editorial of December 13, 1854, in the *Pennsylvanian*, the same day the opinion was published, it says: "In determining this question, the whole matter of State Rights, with the powers delegated to the United States, came up for consideration, and the decision could not certainly have been intrusted to safer, nor more able hands. It is a happy thing for our country that the decision of this question arose at a time when peace and good order reigned in our midst, and that the Chief Justice of our Supreme Court was called in for its settlement. The jurisdictions of the State and United States

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<sup>1</sup> Letter of Justice Woodward's to Chief Justice Lewis of December 2, 1854.

<sup>2</sup> *Legal Intelligencer*, December 1, 1854.

<sup>3</sup> For an account of the *Nisi Prius* Court see "The Life and Times of Thomas Smith, 1735-1809," by Burton Alva Konkle, pp. 164-5.



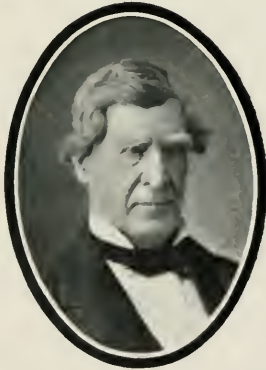
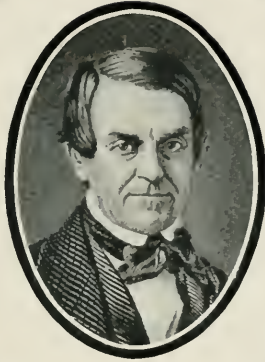
Walter H. Lowrie  
From a photograph in the  
Lewis Material  
in possession of the  
Pennsylvania Bar Association,  
Philadelphia

George W. Woodward  
From a photograph in the  
Lewis Material  
in possession of the  
Pennsylvania Bar Association,  
Philadelphia

Ellis Lewis,  
Chief Justice,  
From an engraving in possession of the Pennsylvania Bar  
Association, Philadelphia

John C. Knox  
From a photograph  
in possession of  
Mrs. C. F. Woodward,  
Lawrenceville, Pennsylvania

Jeremiah C. Black  
From a photograph in possession of the Pennsylvania  
Bar Association, Philadelphia



THE SUPREME COURT OF PENNSYLVANIA IN 1854





courts have several times recently come into conflict, and threatened serious consequences. \* \* \* \* \* Chief Justice Lewis has the happy faculty of making everything lucid and even eloquent which his mind touches, without detracting in the slightest degree from the force of his argument. \* \* \* \* \* Every citizen of the Union should read the opinion of Chief Justice Lewis, as it will give a more full and accurate knowledge of the relative rights of the State and the United States than anything we have seen in print. \* \* \* \* \* The opinion will add to the already eminent standing of its author."

While the opinion is too long to reproduce, one or two significant extracts will illustrate its point: "Was the sheriff bound to obey the order made by the Circuit Court of the United States? The answer to this question depends upon another: Had the Circuit Court of the United States jurisdiction over the parties and the question in the manner in which it was exercised? In considering a question of this kind, it should not be forgotten that the States of this Union are separate, free, and independent sovereignties, in all particulars, except those over which they have voluntarily given the control to the government of the United States; that the States are, in general, unlimited in their authority, while the United States government is one of *limited* and *enumerated* powers, and is strictly confined to the exercise of powers thus enumerated. This fundamental principle of the Union is distinctly stated in the Federal Constitution itself. After enumerating the powers granted to the United States, the Constitution proceeds to declare 'that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' It is upon this principle of State sovereignty that each State has an undoubted right to regulate its own domestic institutions according to its own wisdom, and that neither its sister States, nor the Congress of the United States, have any right to interfere with such regulation." Then after an exhaustive argument in which he finds that the sheriff was not bound to execute the order, he says: "In giving this opinion, there is not

the slightest feeling of disrespect for the learning and integrity of the Judges of the Circuit Court. On the contrary, we can appreciate the feeling and excuse the errors of a judgment likely to be excited by the disorderly movement of a class of individuals who, setting up their own judgments as a 'higher law' than the Constitution, are constantly endeavoring to defeat the operation of certain laws of the United States. But these considerations do not absolve us from the discharge of our official obligations."

But records of his work in *Nisi Prius* are so incomplete that no extended treatment of it can be attempted. Turning to the session of the court *en banc*, but fifty-five opinions are reported for the entire court at its first meeting in Philadelphia in 1854-5, with but eleven of these rendered by the Chief Justice.<sup>1</sup> One of these is interesting as an early railway case. "Limited means," reads the opinion, "may perhaps limit the amount of business done by a railroad company, but it can never furnish an excuse for appropriating all its energies to any particular individuals. If it possessed this power it might build up one set of men and destroy others; advance one kind of business and break down another; and might make even religion and politics the tests in the distribution of its favors. Such a power in a railroad corporation might produce evils of the most alarming character. The rights of the people are not subject to any such corporate control."<sup>2</sup>

Only forty cases are reported for Harrisburg in 1855 with fifteen, one of which is an "additional" opinion, as the work of Chief Justice Lewis. Two of these are such excellent examples of the direct, exact, and luminous exposition of the point at issue that the entire body of the opinion is of general interest, although but a part of each is here given. "For aught we know," the first in 12 Harris, 390, reads, "the evidence given on the trial might have fully justified the jury in deciding that the crime was murder of the first degree. But, as they have not done so, the [Supreme] Court cannot look into the evidence for the purpose of ascertaining the

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<sup>1</sup> Dissents have probably been sufficiently noted to show their rarity, in the preceding chapter, and need not be noted in the present one.

<sup>2</sup> 12 Harris, 382.

character of the offense. This would be an infringement of the trial by jury. They have found the prisoner 'guilty in manner and form as he stands indicted,' without otherwise 'ascertaining' the degree." In the second he says: "Our constitution gives the people the right of electing the clerks of the several Courts of original jurisdiction, and of bestowing these offices from time to time upon inexperienced men. If the records made up by these public servants are not construed with great liberality, justice cannot be administered. \* \* \* \* \*

The common law embodies in itself sufficient reason and common sense to reject the monstrous doctrine that a prisoner whose guilt is established by regular verdict is to escape punishment altogether, because the Court committed an error in passing the sentence. If this court sanctioned such a rule, it would fail to perform the chief duty for which it was established. Our duty is to correct errors, and 'to minister justice.' But such a course would perpetuate error, and produce the most intolerable injustice."<sup>1</sup> The latter is an "additional" opinion—a class that is almost invariably of peculiar strength, no doubt because it is the result of unusual conviction in the mind of its author.<sup>2</sup>

Omitting the Sunbury session, of which but five opinions are reported, with but one from the Chief Justice, and turning to the Pittsburgh term of 1855, the remarkable list of one hundred and twenty-seven opinions appears. Of this list forty-four are credited to Chief Justice Lewis.<sup>3</sup> In one of these he said: "This construction accords with our usages, and with the spirit of our institutions. It is most conducive to the interests of all parties to the contract, and we hold it to be the law of Pennsylvania."<sup>4</sup> On the point of the number of pounds of metal to a ton on the Allegheny River, where custom made a ton larger than the law did, he referred to Solomon's remarks about "diverse weights" and

<sup>1</sup> 1 Casey, 22.

<sup>2</sup> Chief Justice Lewis received the following self-explanatory letter from President Pierce, dated October 6, 1855: "It affords me much pleasure to inform you, that a vacancy in the Marine Corps enables me to tender an appointment to your son, James. I trust that he may find the position agreeable to his tastes and that he may eminently adorn the profession." Lewis Papers.

<sup>3</sup> In 2 Casey eight more are credited to this term with one to the Chief Justice, p. 358.

<sup>4</sup> 1 Casey, 140.

*Magna Charta's* demands on the same line because of abuses in England, and then said: "The example of evasion in England is an abomination to us. Like all other evil customs it ought to be abolished. It is 'more honored in the breach than in the observance.' Considering the commercial spirit of the age, it is of great importance to guard against fraudulent practices, and to furnish a standard of weight and measure which shall be uniform throughout the State, and which shall be binding upon all men within our jurisdiction."<sup>1</sup> In another case where a claim was made to rights of commons pasture is a, for him, rare instance of ironical expression: "The herbage [on this commons]" said he, "is about as abundant as that which might be found in a recently disinterred street of Herculaneum."<sup>2</sup> Again he says, in another case: "If his right exists, it presents the unusual spectacle of a right without a remedy to enforce it. It is idle to talk of such a right. If not recognized and enforced at law, it is the same as if it had no existence. This is the practical view of the subject. The law deals with the substance, not with the shadow."<sup>3</sup> He administered a rebuke to an attorney at this term, as follows: "Allegations respecting the charge of the judge, giving a different version of it from that filed of record under the sanction of his oath of office, are highly indecorous. He is not a party to the case, and cannot be heard in his defense. It is, therefore, out of order to make the argument of a writ of error an opportunity for attacking his integrity. A writ of error is not a commission to settle questions of veracity or integrity between the judge and the counsel; and the counsellor who perverts it to such a purpose abuses his privilege."<sup>4</sup> Again, speaking of the relations of client and counsel, he says: "As the necessities of litigation compel confidence on the one side, the policy of the law requires fidelity on the other. The policy which enjoins good faith requires that it should *never* be violated. The reason for requiring it at all demand that it shall be perpetual. \* \* \* Where fidelity is required, the law prohibits everything which presents a temptation to

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<sup>1</sup> *Casey*, 115.

<sup>2</sup> *Ibid.*, 180.

<sup>3</sup> *Ibid.*, 199.

<sup>4</sup> *Ibid.*, 335.

betray the trust. The orison which deprecates temptation is the offspring of infinite wisdom, and the rule of law in accordance with it rests upon the most substantial foundations."<sup>1</sup>

His increased prominence as Chief Justice led David Paul Brown to make him the subject of a sketch in the second volume of his *Forum* issued this year. It was in a series on the then late Justice Henry Baldwin and Justice Robert C. Grier, of the National Supreme Court; ex-Chief Justice Black and the other members of the State Supreme bench. While not always reliable as to facts, Mr. Brown's estimates of character are always interesting and, for, their period, rank as classics on the characters with which they deal, as do Binney's sketches of the "Old Bar" of Philadelphia.

"Judge Lewis," says Brown, "has received the degree of Doctor of Laws and Doctor of Medicine, and he richly merited both. Indeed, if his honors had been equal to his deserts, D. D. might also have been appropriately conferred upon him."<sup>2</sup> To say that these distinctions are not matters of pride with him would hardly be believed; for if we were called upon for an opinion as to what is his highest ambition, we should incline to the belief that it is directed to eminence in *all*, rather than any *particular* science. The diversity of his application is such that the change seems to afford relief, and he knows each branch of his studies better, from extraordinary familiarity with all. But his highest quality is his conscientiousness. His judgment is sometimes eccentric, but his conscience, never. No influence can swerve or sway him from what he believes to be right. \* \* \* \* Since Judge Lewis has been in his present situation he has abundantly sustained his former character, and fulfilled the expectations and hopes of those who knew him best and loved him most. For industry he is unequalled; and industry such as his, let it be observed, is rarely

<sup>1</sup> *Ibid.*, 359.

<sup>2</sup> A letter from the rector (W. H. Odenheimer) of St. Peter's, of December 8, 1853, to Judge Lewis seems to confirm this idea. He had presented the Judge a copy of Hooker's Works, and a correspondence arose, in which, says this letter, "you show yourself at home in the Theological as well as the Legal Profession." He also adds: "I do not hesitate to say, that it will be difficult for the ablest professional student of this historical question, to combine so brief & get so satisfactory a resolution of it, as your letter to me embodies." Lewis Papers.



the companion of a genius so comprehensive and various."

"Chief Justice Lewis," he continues farther on, "is now in the 57th year of his age; five feet seven inches high; of a slender, but agile person; black hair; a dark, deep-set, penetrating eye, indicative of great kindness, great spirit, and great quickness of apprehension. Any one to look at him would know him at once to have been a model of industry all his life. He is perhaps too much of a politician; but that is not his fault so much as the fault of the circumstances into which he has been thrown, by those accidents which are ever attendant upon the wayward footsteps of self-taught men. But, politician as he is, no one shall justly assert that he ever was a political strategist, or deny that, in all his relations, private or public, political, professional, or official, he has always proved a faithful and an honest man. He ever bears in mind the doctrine of Socrates, that 'Three things belong to a judge: to hear courteously, consider soberly, and give judgment without partiality.' To say that he is an ambitious man is to say no more than may be readily conceived from the traits of his life already exhibited; but his ambition has ever had an honorable direction, and never stooped from its lofty flight to unite with meanness, or play the pander to power, at the sacrifice of principle. He is a humane though a just judge; conciliatory and forbearing with the bar, indulgent to the young and inexperienced, and especially sympathetic towards those who struggle for advancement in their profession, under sullen influences, and against adverse circumstances—

"Taught by that power that pitied *him*,  
"He learns to pity *them*,""<sup>1</sup>

The Philadelphia session of 1855-6 resulted in eighty-two opinions, eighteen of which were the work of the Chief Justice. He had occasion in one of these opinions to quote himself when President Judge, namely, in the *Atlee v. Lancaster County* case already noticed, saying that "The correctness of that decision has never been questioned. On the contrary, its principles were fully sanctioned by the Supreme Court afterwards," where-

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<sup>1</sup> *The Forum*, by David Paul Brown, Vol. II, pp. 118-33.

upon he names the two cases in which it was done. "In this enlightened age," said he, "a coroner who would consign to the grave the body over which he had held an inquest without availing himself of the lights which the medical science has placed within his reach would in most cases fall short of what his official duty requires. A thorough examination, aided by the professional skill, is in general absolutely necessary to the proper administration of justice. Without such examination, groundless suspicions may be entertained, and prosecutions commenced, at once cruel to the objects of them, expensive to the county, and wasteful of the time and talents of all persons engaged in them. But this is not all. Without an examination of the body recently after death, and a complete demonstration from the evidence thus in the power of the commonwealth, that the death was caused by violence, the guilty agent cannot be convicted. Where, from an omission to employ a physician to examine the body, the cause of death is left in doubt, the accused must in general escape; because in all cases of doubt he has a right, under the law, to demand an acquittal. Thus the guilty may be again let loose upon society, and the people be deprived of that protection which the law was intended to provide."<sup>1</sup>

The opinions of Chief Justice Lewis, as has been said, grew more and more direct and are so stripped of anything but the actual technical argument or exposition that great difficulty is experienced in using an extract for illustration. It need hardly be said that no analysis of the work of a given character is so next to impossible as the work of a jurist, whose opinions are so largely the product of the entire court. To point out just what part he has taken in the Court's choice of the main elements of decision is of course impossible, because of the privacy of the consultation room; to indicate just the bearing of his technical mastery, his experience, his wide learning, his conciliatory spirit, the effect and soundness of his wisdom, his broad common sense, his social, economic, political or spiritual philosophy, his ideals, his personal relationships, and the thousand-and-one elements that go to make up the character and power

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<sup>1</sup> 2 Casev, 157-8.

of any great jurist is a result that can only be suggested, not accomplished. An examination of the thirteen opinions rendered by the Chief Justice, out of the total of fifty-five at the Harrisburg session of 1856, tends to confirm this conclusion. His method and characteristics produce short opinions as a rule, with a directness, intensity and vigor of presentation that leave on the mind an impression of great mental energy and peculiar singleness of aim.

Omitting the Sunbury session where he rendered two of the eleven opinions, and turning to the Pittsburgh court, there is a list of sixty-nine opinions, nearly one-third of which were written by Chief Justice Lewis, one of them being an "additional" opinion. "The trial by jury," said he in one of these, "is a right so sacred that the courts should guard it with jealous care. If a party entitled to it is willing to comply with the terms required by law, he is not to be deprived of his rights by an error of the officer having charge of the record. This principle covers the case before us."<sup>1</sup> In the "additional" opinion referred to—an opinion written when he was Justice—he had occasion to express himself on railways, which were then largely in their infancy. "The right to cross a public road in the construction of a railroad," said he, "is as clear as the right to construct the railroad itself. The angle at which it crosses must necessarily depend upon circumstances. It is certainly not restricted to a right angle where this would require dangerous curves. Short curves in a railroad interfere with that velocity which is the main object of this description of improvement. They also endanger the lives of passengers on the ordinary roads, as well as those in the railroad cars. It is therefore of primary importance that the line of the railroad be straight. This paramount object ought to be secured, if possible, although in doing it the common roads may be crossed repeatedly, and at various angles, or even approached so near as to alarm the horses and cattle in sections of country unused to the noise of the locomotive, or to the grand and imposing spectacle of a long train of cars, filled with thousands [?] of human beings, or freighted with many hundred tons

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<sup>1</sup> 3 Casey, 263.

of merchandise, whizzing past them with almost lightning speed. The idea that a railroad must be made crooked in order to avoid proximity to, or crossing an ordinary road, is one which would embarrass and impair the usefulness of this, the greatest improvement in commercial intercourse which the world ever saw. It places an object of minor importance above that which, in its tendency to promote the general benefit, is so far superior as to be altogether inestimable. It places ignorance above science, indolence above enterprise, and the minority above the majority. It is of close kindred with the doctrine that the owners of the adjacent lands have a right to pasture their cattle on the railroad track, and to compel the engineers and conductors to stop a long train of cars while they endeavor, by means of sticks, clods, and stones, to drive off, and keep off the cattle long enough for the train to pass in safety."

Another paragraph in this interesting opinion is as follows: "I regret most sincerely that a majority of my brethren have thought that the proper construction of the charter requires these inconvenient and dangerous deviations from a straight line, in one of the most extensively travelled railroads on the continent. But it is clear that we have no authority to control the company further than to confine it within the limit of its charter. We have therefore no right to deprive its directors of the discretion reposed in them by law; and we cannot compel them to adopt the locations recommended by the authorities of Erie. On this part of the case I fully concur with the Chief Justice in the opinion just delivered. The result is, that the railroad has been seriously injured, and the company put to great expense, while the citizens of Erie have entirely failed in securing the object of their exertions. The change of locations thus forced upon the company will produce no advantage whatever to any one, and least of all to the people of Erie. If this decree could be forgotten, like a judgment in an ordinary personal action, I should feel less mortification at the result. But, in impairing the usefulness of this great thoroughfare of the western world, we have erected a lasting monument. Its voice [?], like the herdsman's call, will reverberate along the hills and valleys after

the original sound shall have died away; and the light which it sheds upon railroad science, like that reflected in the evening sky, will remain after the body from which it emanates shall have departed."<sup>1</sup>

Probably the most serious questions before the court at this period were those of the railways, as those of the canal system were in the days of his Attorney-Generalship.<sup>2</sup> In the Mercer County case he voiced the decision of the court, in which case Black was absent and Knox dissented. He says "the action of the grand jury was intended to be mandatory—a command and not merely an authority—is manifest from what has been already said. The 'advice and recommendation' of the grand jury was to be regarded as an *order*, which the commissioners were not at liberty to disobey. This is the plain meaning of the act. It breathes through every word, and speaks out in every line. As if to leave not a particle of doubt on this question, the legislature, in a subsequent part of the act, speak of the amount of such subscription as '*ordered* and designated as *afore-said*.' It follows that the commissioners had no discretionary authority whatever in the matter; they were merely permitted to hold the pen, and to write precisely what they were directed by the grand jury to write. Nothing more—nothing less. We can readily see many good reasons for this. The commissioners are selected so long in advance of the decision to be made that all persons who may be disposed to apply improper influences have abundant opportunities of so doing. They are but three in number, and two of these might decide the fate of the county. These two might lack the wisdom necessary for such an important measure. They might also lack the integrity required for such a high trust. It is not necessary to deal in ambiguous language when discussing such a subject. From the beginning of the world to the present time, history has been teaching her lessons of human frailty, beguiled and corrupted by human wickedness. It is fair to presume that these lessons were not lost on the legislature.

<sup>1</sup> 3 Casey, 370 and 373.

<sup>2</sup> See "The Life and Speeches of Thomas Williams, 1806-1872," by Burton Alva Konkle, under index titles "Municipal Subscriptions to Railways," "Transportation," etc., for a treatment of this subject.



Although they could not distinctly see the wily serpent of corruption, the waving grass often indicated his stealthy course. It is therefore not improbable that one of the objects of the restrictions in the Act of 1852 was to guard against bribery. Whatever may have been the motive, the legislature were unwilling to place the fortune of the whole county at the disposal of two county commissioners. \* \* \* \* \* The grand jury are not so readily influenced by improper suggestions. They are selected for their judgment and integrity, and come from all parts of the county, without respect to party politics. They are exposed to temptation for too brief a period to be safely approached— \* \* \* \* \* In the multitude of their counsel there is comparative safety. \* \* \* But it is sufficient for the court to know that the law is so written and must be obeyed.”<sup>1</sup>

With the opening of the Philadelphia session of 1856-7 began the last year of his Chief Justiceship, and, as before, out of the eighty-nine opinions of the court at the metropolis, almost exactly one-third were the work of the head of the court—counting in the list one “additional” opinion. One of these is an example of his broad and profound sense of justice. “In the section of the Act of 1855, in question here, there is nothing to show that the terms ‘charitable uses’ were used in a restricted or popular sense. Nor can we fairly infer from any other part of the act that they were so used. We are, therefore, bound to understand them in their legal and technical signification. We have no doubt that they were so understood by the legislature, and that they were intended to embrace objects of a religious, literary, and scientific character, as well as those which related to the poor and afflicted. We cannot close our eyes to the mischief supposed to exist, and which the Act of 1855 was intended to remedy. The object was to protect the heirs and next of kin from large and improvident dispositions by persons on their death-beds, or when their minds were enfeebled by the hopes and fears of approaching dissolution. Gifts to objects of a scientific or literary character were certainly as much within the mischief as any other gifts to charitable uses.

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<sup>1</sup> 3 Casey, 401-2.



To hold, therefore, that the legislature intended to lay a heavy hand only on gifts for the relief of the destitute, the afflicted, and the helpless, while donations for objects of a merely literary and scientific character were to be exempted from the restriction, would be doing great injustice to the benevolence and common sense of our law-makers. In all cases where the validity of such devises has depended upon holding them to be for charitable uses, they have uniformly been sustained as falling within that description. Now, when a restriction has been imposed upon such devises, we are asked to evade the restriction by declaring that they are *not* for charitable uses. We cannot blow hot and cold in the same breath. We cannot, for the purpose of sustaining such a gift, declare it to be a good gift for charitable uses, and at the same moment, for the purpose of evading the provisions of the Act of 1855, hold that it is not such a gift. The argument which confines the statute to gifts for the relief of the poor and afflicted, if successful, would convict the legislature of an intent which would do violence to the most ordinary impulses of human nature. It says, in effect, that when the bereaved widow, the helpless orphan, and the wretched sufferer from disease, cry aloud from the depths of their poverty and distress for relief which is absolutely necessary to sustain life, the policy of the State is to throw obstructions in the streams of charity which gush spontaneously from the hearts of the people; but when schools, academies, colleges, and universities seek for aid to educate children whose parents are able to educate them without such aid, or to advance 'gentlemen's sons' in the learned professions, all obstructions are to be removed!—thus, accomplishments are preferred to the necessities of life—the rich are exempt from the restrictions, and the poor are stripped of the charity which benevolence would extend to them. We cannot adopt any such construction of the act."<sup>1</sup>

An expression in an opinion in a case of a constable's compensation in certain instances is characteristic. "If the object of the law," said he, "was to encourage the peace officers in the prosecution of all offenders deserv-

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<sup>1</sup> 4 Casey, 36-7.

ing imprisonment at hard labour, then the cases before us fall within the spirit of the act, because the legislature have deemed the offenses of drunkenness and vagrancy deserving of this punishment. We fully concur with them in their judgment in this respect. Drunkenness and vagrancy are not only evils in themselves, but they are productive of innumerable vices and crimes of great magnitude. They are nuisances in the body politic which ought to be suppressed at every hazard; and if we were obliged to declare that the law was so defective and unjust as to require constables to pursue and arrest offenders of this description, while it denied them compensation for such services, we should perform the ungracious duty with mortification and regret. But we are happy to say that the law is not so unreasonable; and that the letter and spirit of the Act of Assembly requires that the county should compensate the officers and witnesses for the Commonwealth, where the persons convicted of these offenses have not property sufficient for the purpose. The judgment of the court below was right."<sup>1</sup>

During the spring of 1857 there came the first of several changes in the court that, during the year amounted to almost total reorganization. Justice Black had a long term to serve, but the exigencies of Democratic politics caused by James Buchanan's election to the Presidency of the United States the previous autumn made it necessary that he should go into the President's cabinet as solution of conflicting claims, and the President commissioned him Attorney-General on March 6th and he resigned from the Supreme Bench five days later.<sup>2</sup> His place was filled on April 6th by the appointment of Justice James Armstrong, who served only until the November election.

The Harrisburg session was productive of forty-six decisions, but eight of which were written by the Chief Justice, but none of these seem to answer the purpose of illustration, so that one may turn to the final session of the court under Chief Justice Lewis at Pittsburgh. In this instance he had almost exactly one-fifth of the

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<sup>1</sup> 4 Casey, 175.

<sup>2</sup> "Reminiscences of Jeremiah Sullivan Black," by Mary Black Clayton, p. 99. 5 Casey.

eighty-nine opinions delivered, namely, eighteen. In the case of *Miller v. Kirkpatrick*, the Chief Justice had occasion to touch the religious field. It was on the question of the taxation of the salary of a minister employed by a religious society. "It is not our province," said he, "to decide whether persons learned in theology may regard the emoluments of a minister's calling as 'gifts of the altar—as spiritualities.' The question here is, how are they to be regarded in a court of law, when the government demands of them a contribution to pay the debt and expenses of the State. The money paid to a minister for his services, and designed for his personal benefit, is very far from being a mere '*spirituality*.' It is designed to supply his temporal wants. It is appropriated to that object alone. His services to the congregation may indeed be *spiritual*; but he would not be able to live long if his compensation were of the same character. Fortunately for him, it is not so; but is paid in a currency as tangible and purely temporal as the wants it provides for. He may hold his 'appointment of God.' 'All power is of God.' 'The powers that be are ordained of God,' and he has 'no right to resist their ordinances,' or to refuse 'tribute,' or to renounce 'allegiance to the State.' It is his duty as a Christian 'to be subject not only for wrath, but for conscience sake,' and to pay 'tribute to whom tribute is due, custom to whom custom.' The Savior came into the world, at the very period when his earthly parents, at great inconvenience to themselves, were setting an example of allegiance to the government, and of obedience to its revenue laws. His precepts afterwards were always in accordance with that example. And the law, resting upon the foundation of that Christian morality which requires all who receive protection from government to contribute a just share to its support, will enforce its claims."

"We do not see," he continues, "how a law which makes no distinction between ecclesiastical occupations and other pursuits, but taxes all alike, can tend to a union of Church and State. To hold that a minister of the gospel cannot be taxed at all, lest religious rivalry might lead to the abuse of that power, would furnish a precedent for denying all power of taxation; for there

is no power which might not be abused by bad men. We must trust to the intelligence of the people to guard against this evil. So far from seeing any constitutional objection to the imposition of taxes upon clergymen, as well as upon other professions, it has been seriously questioned whether they can constitutionally be exempted from their share of the public taxes. The Constitution declares that 'no man can of right be compelled to support any place of worship, or to maintain any ministry against his consent.' A numerous class of our citizens still hold to the faith of the founders of this Commonwealth, and bear their testimony against what they call a 'hireling ministry.' Many others read their Bibles in their own way, disclaiming all connection with religious congregations. If these classes of citizens should be compelled to pay more than their just proportion of taxes, in order that ministers of the gospel might be exempt, it is substantially the same thing as collecting the excess of taxes and paying it to the ministers to aid in maintaining them. Such a partial rule of taxation compels the Protestant to aid in maintaining the ministry of the Roman Catholic, constrains both to aid in supporting the Jewish priesthood; forces each to support a form of religion which his conscience rejects, and compels the opponents of all to aid in supporting all. These suggestions may serve to show that the claim to constitutional exemption is not only rejected, but met by a counter claim, which may deserve consideration when the question arises."<sup>1</sup>

In one of the cases against the Commonwealth Chief Justice Lewis discussed the juror and judge in a characteristically luminous manner. "It is made matter of complaint," said he, "that the judge in his charge, among other remarks, said that 'he who is to pass on the question (of guilt or innocence) is not at liberty to disbelieve as a *juror* while he believes as a *man*.' Notwithstanding the high authority which sanctions the use of this language, it is possible that some jurors may occasionally be misled by it. Men, in their social conduct and business transactions, often act on bare *suspicion*, without evidence, and this, some jurors might possibly

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<sup>1</sup> 5 Casey, 230.

suppose, is what is meant by their *belief* as *men*, contradistinguished from their belief as *jurors*. But it is impossible for us to supply jurors with intelligence and judgment, and equally out of our power to prescribe to the courts below the language which the judges are to use in communicating instructions. The judge who endeavors to express his thoughts in a style so plain and simple that he will be readily understood by the most unlearned men on the jury, best performs this part of the duties of his high office. The question for us to decide, however, is not whether the court made use of the language best understood by the jury, but whether instructions have been given which are erroneous in point of law. It must be remembered that jurors are *men*, and that it is because they have *human* hearts and sympathies and judgments that they are selected to determine upon the rights of their fellow-men. If they were more or less than *men* they would not be the constitutional peers of the prisoner, and would be disqualified to decide his cause. The term 'juror' means nothing more than *twelve men* qualified and sworn to try a cause according to the evidence. Their oaths as *jurors* rest on their consciences as *men*, and as *men* they are accountable to God and their country for a verdict. Nothing more is demanded of them as jurors than an honest exercise of their judgments as men. The evidence which produces conviction on their minds in one capacity works the same result in another. Their belief is the same in both. There was therefore no error in law in adopting the language used by Chief Justice Gibson in the *Commonwealth v. Bridget Harman*: 4 Barr, 273."<sup>1</sup>

The above is the last but two of the opinions of Chief Justice Lewis, and, curiously enough, the last opinion reported for the Pittsburgh session and the expiration of his period as head of the court is one to determine the exact date of the termination of his occupancy of that high office. In this opinion, of course, he had no part, and the decision of the court was rendered by Justice Woodward, whose own language happily expresses the interesting complications of the subject and incidentally interprets officially the status of the Chief

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<sup>1</sup> 5 Casey, 438.



Justice's commission to his high office, about which, it will be recalled, there was some controversy. "In order," said Justice Woodward on November 3, 1857, "that writs out of this court may be tested in the name of the proper officer, and that judgments and decrees may be duly entered between the first and seventh days of December, proximo, it becomes necessary to decide whether the commission of Chief Justice Lewis will expire on the first day of that month, or continue until the 7th, which will be the first Monday.

"If we should follow the strict letter of the constitutional amendment of 1850," continues Justice Woodward, "which first introduced an elective judiciary into our system of government, it would be obvious that Judge Lewis' commission could not extend beyond the 1st of December, because, elected in 1851, at the first election under the amendment, and the term of six years assigned to him by the lot therein prescribed, he was commissioned on the first Monday, which happened, that year, to be the first day of December, 1851, for *six years*—a period that would expire at midnight of the last day of November, 1857. He received subsequently a commission as Chief Justice, which, however, was founded on that granted in 1851, and in no wise superseded it, or affected the limitation therein expressed. The title to his office was derived not from the commission which designated him as the Chief Justice, but from the popular election of 1851, and the commission in pursuance thereof and according to these, upon a literal reading of the Constitution, his title would expire with the present month of November. But we are satisfied that the spirit and true meaning of the amendment are rather to be followed than its strict letter; and, according to these, the first Monday of December is made the terminus *a quo* and *ad quem* of judicial commissions, so that whether we reckon the special tenures assigned to the first five judges elected to this court, or the general tenures of fifteen years assigned to all subsequently elected judges, they are to be considered as running from the first Monday of December next succeeding the election to the first Monday of December in the year of their limitation. In other words, we hold



that the years mentioned in the amendment are to be counted from Monday to Monday, and not from the day of the month to the day of the month.

"The amendment itself," the decision continues, "implies that this is a sound construction. It fixed, expressly, the first Monday of December, 1851, as the day on which all prior judicial commissions should expire, and, of course, indicated that as the day on which the new ones should commence. And it was the first *Monday*, without regard to the day of the month on which the day of the week should fall. That year the first Monday happened to be the first day, but that day was not selected because it was the first day, but because it was the first Monday of December. The framers of the amendment very well knew that the first Monday would not always fall on the first day. And so, in case of a vacancy happening, it shall be filled, says the amendment, by executive appointment, to 'continue till the first Monday of December succeeding the next general election.' Our brother Armstrong is on the bench by executive appointment under this clause of the Constitution, and his commission, by its own limitation, must extend to the first Monday, this year the seventh day of December. It is unreasonable to suppose that the amendment, which was designed to establish an elective judiciary, meant to make a distinction in favor of an executive appointment, and against a popular election, and we should mar the symmetry of the system by so administering it. If both classes of judges, however, those elected for a term of years, and those appointed to fill vacancies, are conformed to the same rule—if both hold to the first Monday of December, we have a system that is simple, consistent, and harmonious in all its parts.

"This constitutional amendment originated in and was draughted by the legislature," Judge Woodward continues. A legislative interpretation of the meaning of its terms is therefore entitled to peculiar respect. We have a legislative construction of it in the eleventh section of the Act of Assembly of 15th April, 1857, regulating the election of judges, wherein it is provided that as soon as practicable, after the first Tuesday in

November next following any election of judges, 'the governor shall grant the persons elected respectively commissions as now required by law to hold their respective offices *from and after the first Monday of December next following such election*, for and during their respective terms of office,' &c. The constitutional amendment having failed to fix, in terms, the date at which the commissions of elective judges should take effect, the legislature supplied it in this section, and, of course, supplied it according to their understanding of the meaning of the Constitution.

"The gentlemen recently elected, Messrs. Strong and Thompson, will be commissioned under this section, and cannot, of course, come upon the bench before the 7th of December," proceeds the decision. "If Judge Lewis should go out on the first, there would be a vacancy in the office for a week, and vacancies, says the constitutional amendment, happening from whatever cause, are to be filled by executive appointment to continue till the first Monday of December succeeding the *next* general election. It is not to be supposed that the governor would exercise his power of filling this vacancy, but if the Constitution be construed according to its letter, the power of appointment would clearly exist; if exercised, the appointee of the governor would be in possession of the office by virtue of a *constitutional grant*, whilst the newly-elected judges would claim it only in virtue of a *legislative regulation*. The inferior law would, of course, have to yield to the superior, and one of the elected judges would have to stand back for a year. But which of them? The Constitution and laws afford no means of determining. Elected at the same time and for the same time, and to retire necessarily at the same time, a difference of a year would exist in their tenures, but no man could tell which was the short one. The Constitution was never meant to produce results so absurd and unjust. It provides that the Supreme Court shall consist of five judges, and it established the court as a perpetual institution. It contemplated the possibility of vacancies, and provided for filling them, but they were vacancies happening from death, resignation, or other cause *external to the Constitution itself*. In its own legiti-

mate and necessary operation it would cause no vacancies. It would dismiss no one of its servants until it had provided a qualified successor. It would not constitute the court, even for a week, with less than five judges, nor give the governor power to displace for a year the judge chosen of the people.

"To give our fundamental law its intended effect," he continues, "and to prevent confusion and disorder, Chief Justice Lewis's commission must be regarded as extending to the first Monday of December. If it be said that this is adding a week by judicial construction to his prescribed term, it must be accepted as a necessary consequence. And if, fifteen years hence, the first Monday shall fall on the third day of December, the terms of Messrs. Strong and Thompson will be abbreviated a week, but that, too, must be borne as a necessary result of the indefinite terms in which the constitutional amendment was conceived. It is a common fault of our legislation, and the amendment of 1850 shares it largely, that phraseology is not carefully considered. In the preparation of the amendment of 1838 nothing was more anxiously attended to than the language in which comprehensive rules were to be expressed, and the consequence has been that less doubt and litigation have grown out of those numerous amendments than have sprung from the single amendment of 1850. Reading it, however, as we have construed it in respect to the termination of judicial commissions, we avoid vexatious embarrassment, and give effect to its spirit and intention; and as to the week added to one judicial tenure and taken off from another, the maxim must be applied, *De minimis non curat lex*. The prothonotaries of the several districts will test writs in the name of Chief Justice Lewis until 7th December, 1857."<sup>1</sup>

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<sup>1</sup> 5 Casey, 518.

## CHAPTER XIII

### HE DECLINES UNANIMOUS RENOMINATION BY THE STATE DEMOCRATIC CONVENTION AND RETIRES TO PRIVATE LIFE

1857

Two days before the inauguration of James Buchanan as President of the United States in March, 1857, and four days before Chief Justice Taney's Dred Scott decision, the State Democratic Convention was called to order at the hall of the House of Representatives at Harrisburg by Colonel John W. Forney, chairman of the State Central Committee, for the purpose of making nominations for Governor, a Judge of the Supreme Court and Canal Commissioners.<sup>1</sup> The vote on the first officer resulted in the nomination of William F. Packer for Governor. During the evening names were presented for the Supreme Court nomination, and G. G. Westcott, of Philadelphia, proposed that of Hon. Ellis Lewis to succeed himself. Immediately it became evident that the elective judiciary was now on trial again, for certain main districts of the State were prepared to press their candidates for the place which good public policy dictated should go to the distinguished jurist who was then filling it so ably. The name of William Strong, Samuel Hepburn, William Axon Stokes,<sup>2</sup> James Thompson and several others were then presented by their friends. Mr. Westcott asked that a letter in his hand from leading members of the bar of Philadelphia regarding Chief Justice Lewis might be read, but the friends of other candidates objected to that project, at least before the

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<sup>1</sup> It will be recalled that Taney's decision was followed the next day by the dissenting opinions, especially that of Justice Benjamin R. Curtis, an alleged irregular reply to which by Chief Justice Taney, with a rather strained correspondence between the two, confirmed Justice Curtis' previous inclination to resign on account of inadequate salary. A few knew of his inclinations at this time, although he did not formally resign until September 1st. See "The Life and Writings of B. R. Curtis," by his son.

<sup>2</sup> For an account of Major-General Stokes see "The Life and Speeches of Thomas Williams, 1806-1872," by Burton Alva Konkle. Index.

vote was taken, and the convention yielded. A letter from Major-General Stokes, insisting that his name was used against his will was read, however, and one paragraph of it said that "as the people of Pennsylvania have vindicated their wisdom by the election of Judges who are, at least, equal as a body to those of any former period of the history of the Commonwealth, they should exhibit their constancy by re-electing those who have proved themselves worthy of their trust. Judge Lewis has been tried and has not been found wanting. The Democrat of true conservatism demands that he should receive the reward of his well doing."<sup>1</sup>

On the first ballot the Chief Justice received 43 votes, Strong received 37, Hepburn 20, Thompson 3, and others received from 9 votes down to 1. The second ballot, however, closed with 73 for Lewis, 47 for Strong, and 12 for Hepburn, whereupon it was made a unanimous renomination for Chief Justice Ellis Lewis. It was then deemed proper to read the letter from members of the Philadelphia bar, addressed to Mr. Westcott and other members of the Philadelphia delegation. "The undersigned, members of the bar of Philadelphia," it reads, "address you as delegates to the Convention which meets at Harrisburg on the second of March to nominate a candidate for the Supreme Bench, on the expiration of Judge Lewis' term. We wish to be understood as writing this letter with no reference, direct or indirect, to party politics, but from a sense of duty to the public and the cause of the administration of the law in which, as professional men, we are deeply interested. We are desirous that Judge Lewis should be renominated by his political friends. Since he has been known to us as a Judge, he has commanded respect by his learning and ability, and conciliated the regard of us all by his uniform courtesy and kindness of deportment. This is, we believe, the unanimous sentiment of this bar. His nomination and election will give general satisfaction from these personal considerations alone.

"But there are others of still greater import which we take the liberty of suggesting to you," it proceeds. "The instability of our elective judiciary can only be

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<sup>1</sup> *The Daily Pennsylvanian*, Philadelphia, March 5, 1859.



corrected by the proof that a re-election can always be commanded by good conduct; and that the people will not change their judges merely for the sake of change. In the case of the first vacancy which occurred by rotation on the Bench, the incumbent was without dissent renominated, and without difficulty re-elected. This was the case of Judge Black, whose original term was the shortest, being but for three years. Judge Lewis' term of six years is now expiring, and we shall be much gratified, if by his political friends at least the same rule can apply to him. In thus addressing you, we earnestly disclaim any intention to intrude our counsel on you, or the Convention of which you are a member. With the party you represent, some of us have no connection. But as citizens and lawyers, we feel we are doing an act of simple justice to a most meritorious public officer by bringing this matter to your view." This was signed by the following now well-known names: B. Gerhard, Benj. H. Brewster, Theo. Cuyler, Constant Gillou, Saml. H. Perkins, Robert P. Kane, Saml. C. Perkins, Henry J. Williams, A. V. Parsons, Edward Waln, Fred. C. Brightly, P. McCall, F. Carroll Brewster, John Fallon, W. L. Hirst, John Hamilton, Jr., P. P. Morris, Frederick C. Kreider, John T. Montgomery, Geo. L. Ashmead, E. Ingersoll, James R. Ludlow, J. Randall, Wm. E. Lehman, Eli K. Price, H. R. Kness, Wm. S. Price, Joseph A. Clay, Geo. Northrup, N. B. Browne, G. M. Wharton, A. J. Fisher, C. Ingersoll, James C. Vandyke, St. Geo. T. Campbell, Henry M. Phillips, J. F. Johnson, Henry Johnston, Francis Wharton, J. A. Phillips, Geo. Junkin, Jr., H. C. Townsend, Wm. W. Juvenal, S. Serrill, Thomas J. Diehl, Geo. Barton, Charles E. Lex, W. J. McElroy, Wm. Sergeant, Henry M. Dechert, Andrew Miller, Jas. Bayard, W. Heyward Dayton, William B. Reed, Geo. W. Biddle, Ed. E. Law, Wm. Henry Rawle, J. A. Spencer, Horatio Gates Jones, M. Russell Thayer.<sup>1</sup>

The new nomination was at once taken up with enthusiasm, even the followers of Strong stating that they "submitted willingly," as the *Reading Gazette* put it, and counted it "a great compliment" to their candidate that he could gain so "handsome" a vote against

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<sup>1</sup> The *Daily Pennsylvanian*, Philadelphia, March 5, 1857.



"such a competitor" as Chief Justice Lewis. Less than ten days later than this, as it will be recalled, Justice Black resigned to accept the cabinet position under President Buchanan. Immediately the friends of Strong and others pressed their claims for ex-Justice Black's place with intensity. Hon. William Strong (1808-1895) was a native of Connecticut and a graduate of Yale. He was admitted to the bar of Reading, Pennsylvania, just the year before Lewis became Attorney-General, and in 1846, while Lewis was at the head of the Lancaster bench, he began two terms of service in Congress.<sup>1</sup> Those events seemed to have great effect on the consideration of the question of acceptance by Chief Justice Lewis, for there could be no manner of doubt that President Buchanan's state would have elected him—that, indeed, was a foregone conclusion. But, after about two weeks more of thought on the subject, after Black's call to the cabinet, he astonished nearly everybody in Pennsylvania by the following letter from his residence in West Penn Square to Chairman Charles R. Buckalew, of the Democratic State Central Committee, dated March 25, 1857:

"Dear Sir:" the letter begins, "At the late Democratic State Convention, the local claims of the different sections of the State were generously waived for the purpose of securing my continuance in the high and important office of Supreme Judge. The energy with which those claims are *now* urged for the office recently vacated on the Supreme Bench, shows the extent of the sacrifices then made, and the nature of the dissatisfaction which may exist after one section shall be gratified and the other disappointed by the anticipated nomination. The Convention, when re-assembled, might be able to harmonize these claims, if that body had two nominations to make instead of one. I therefore feel at liberty to decline, as I now do, the renomination tendered to me by the Democratic State Convention. In thus promoting harmony, I consult my own earnest desire to retire from judicial life, and at the same time put the delegates to no inconvenience, as they will be obliged to come

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<sup>1</sup> He afterward became a member of the National Supreme Court between 1870 and 1880.

together again for the purpose of nominating a candidate to fill the existing vacancy.

"I have been laboriously engaged in judicial duties," the Chief Justice continues, "nearly twenty-four years --a longer period of service than that of any living Judge in Pennsylvania. I have been thus engaged under three changes of the Constitution. I have aided to the extent of my abilities in bringing up the arrearages of business, in replacing upon their ancient foundations some of the landmarks of the law which had inadvertently been removed, and in maintaining the purity and the independence of the Judiciary; I have constantly endeavored to do justice without delay, fear, favor, affection or ill-will. I now occupy, by the voice of the people of my native State, the highest judicial station in it. My long career as a Judge has received the approbation of the Democratic party in the renomination so generously and unanimously made by the State Convention. All my ambition is satisfied. I have but one wish left, and that is to return to the freedom and independence of private life. I do this with a grateful heart for the long continued confidence of my fellow citizens, and in the full trust that they will appreciate and approve of my motives. Very respectfully yours, ELLIS LEWIS."<sup>1</sup>

This news proved to be, indeed, startling to the public, for the Chief Justice would scarcely be sixty years old when his term should expire in the following December. Morton McMichael's editorial in the *North American* of the same date—an opposition paper—said: "Judge Lewis was among the first who were chosen to fill judicial seats by the popular vote; and it is conceded even by those who have not had, and have not now any large amount of faith in that mode of election, that in his case the choice was a most fortunate one. Certainly, there are few better read lawyers to be found anywhere; and his diligence in the discharge of his onerous duties has been most exemplary. There have been times when we have had occasion to dissent from his decisions; and occasionally we have thought the earnestness of his partisanship affected the tone in which his opinions were uttered; but we have very grave doubts whether his

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<sup>1</sup> The *Daily Pennsylvanian*, Philadelphia, March 27, 1857.

political friends will be able to offer any one for his place who will combine so much legal learning, and patient research, and well-digested information on general subjects, as he has constantly manifested."

The *Pennsylvanian*, the leading organ of his own party, on the same date, said editorially: "This determination of Judge Lewis will be a matter of the most sincere regret to every sound lawyer in Pennsylvania. No man within our Commonwealth has had the judicial experience of the present Chief Justice, and no Judge has labored more zealously to free the docket of the Supreme Court of the accumulated litigation of ages. The whole legal fraternity have had the utmost confidence in the soundness of his *opinion*, and have looked to him for the settled law of the State. We doubt much whether Judge Lewis has ever been equalled in industry on the Bench. With him, it seemed to be a conscientious duty promptly to decide all cases argued before him, even at the loss of his own bodily comfort, by divesting himself of the hours which should have been devoted to rest or recreation. No litigant ever had cause to complain of delay where Judge Lewis had the trial of his cause, and few ever murmured at his decisions. The clearness of his head, in all his conclusions, was equalled by the integrity of his heart, and it may be said of him, as of Lord Thurlow, that he had a head of crystal with nerves of brass, which nothing could shake from the line of conviction and duty.

"But it is not the legal profession only that will regret the step Judge Lewis has taken," the editorial continues. "The people, with whom he has always been a great favorite, because they knew him to be an upright and learned judicial magistrate, will endure painful sensations at the loss of so enlightened a jurist and so valued a friend. Another Judge, whose mind may be filled with the love of the law, may be called to his seat on the Supreme Bench; but it will require many years of practical experience as a Justice of the court of last resort before a new man can attain to the position which Judge Lewis has reached in the confidence of the Bar and the people. We look upon the declination of the Chief Justice as little short of a public calamity, as he is lost

to the Bench at a time when the ripeness of his intellect is of untold value. Although the patriarch of the Judiciary, so far as length of service is concerned, he is still at the very zenith of his mental power, and might continue to impress upon our legal code the clear light of his own lucid mind. As the Judge is a man of great decision of character, we presume that his present determination not to be a candidate is a finality.

"In parting with him," it adds, "we can only say in addition, that if a resolute performance of a duty conscientiously—if great legal knowledge, combined with untiring industry—if a determination to rescue legal decisions from having a double voice—if an inflexible integrity which nothing could shake, sustained by a courage that admitted of no faltering—can entitle a Judge to a lofty place in the niche of fame, no judicial officer within the present quarter of a century has earned it with more intelligent labors than Chief Justice Ellis Lewis has done during his long legal career. The thanks of the citizens of Pennsylvania will follow him into his retirement, and history will enroll his name among the honored sons of our noble Commonwealth. If the Chief Justice should ever again be induced to exercise judicial functions, we trust that he may be called to a seat on the Supreme Bench of the United States, that the nation may possess what our State has lost by his declination."<sup>1</sup>

Mr. Forney, whose sentiments were thus expressed, may have known that there was liable to be a vacancy on the National Supreme Bench at this time, for the Dred Scott decision had made some irritation which was rapidly being intensified between Chief Justice Taney and the Massachusetts member, Justice Curtis, which, together with the latter's belief that the salary was inadequate, did lead to his resignation in the early autumn. President Buchanan, of course, was constrained to fill this place with another New Englander, Justice Clifford, of Maine. Mr. Forney's desires, however, were wholly personal to himself, and those who best knew the Chief Justice knew that his letter exactly stated the case so far as he himself was concerned, and it was a

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<sup>1</sup> Carson's "History of the Supreme Court of the United States," and "The Life and Writings of B. R. Curtis" indicate the conditions that made this remark significant at this time.

real retirement that he sought. In due time he saw the nominations of Strong and Thompson for the two vacancies, and the October elections made sure their elevation to the bench in December, with the post of Chief Justice falling to the latter.<sup>1</sup>

Meanwhile, in November, at the closing Pittsburgh session, he received on the 17th of that month a letter from the leading members of that bar requesting him to name a date convenient for him to attend a dinner at the Monongahela House as an appropriate occasion to express their "high estimate" of his "personal and official character." "Having declined a re-election," they added, "the expiration of your present term will soon sever the relation that for several years has existed between yourself and the members of the bar, a relation that enables them to bear witness to the great learning, long experience, unwearied industry and eminent ability with which your duties as a Judge and Chief Justice of the Supreme Court of this Commonwealth have been discharged. And while your long and successful career in public service entitle you now to retire with the highest honors and to seek the ease of private life, we beg you to accept the assurance that you bear with you the sincere regard and professional respect of Your Friends," etc., after which followed the signatures of seventy-two of the ablest members of that bar, reproductions of which appear on an accompanying page.

On the following Wednesday—as the Chief Justice was to leave for Philadelphia on Thursday—the banquet was held. "At nine o'clock," said the account of it in the Pittsburgh *Chronicle*, "the doors of the dining room were thrown open, and a moment later the names of the officers of the evening were announced. The venerable Judge [William] Wilkins presided, and never have we seen a gentleman discharge the duties of his office

<sup>1</sup> A very good sketch of Chief Justice Lewis was issued by the State Committee immediately after the convention. It mentioned the following decisions regarding land law: 7 Harris, 424; 1 Casey, 45; 1 Casey, 103; 2 Casey, 407; 7 Harris, 203; 10 Harris, 144; and 1 Casey, 401, the last as especially striking. The following were illustrations of his attitude toward agriculture and mining: 5 Harris, 262; 1 Casey, 530; 6 Harris, 235. For commerce, transportation and insurance it gave: 5 Harris, 290, and 136; 9 Harris, 513; 2 Casey, 259; 11 Harris, 137; 6 Harris, 426; 12 Harris, 378; and 7 Harris, 344. The Reigert case was mentioned and the Philadelphia Gas case. On State and National sovereignty, 10 Harris, 406, and the Passmore Williamson case, and in Medical Jurisprudence the Earl and Hoover cases and the McCandless case were mentioned.



better. On his right sat the guest of the evening, Chief Justice Lewis, and Judge Knox, and on his left, Judges Armstrong and Woodward, both of the Supreme Bench. Judge Williams, of the District Court, and McClure, of the Common Pleas, occupied seats at the same table, while in their neighborhood sat Judge Shaler, Judge Hepburn, Mr. Loomis, G. P. Hamilton, and other celebrities of the Pittsburgh Bar.

"When the 'good things' set before the company were discussed, the Secretary read the toasts prepared for the occasion, and a number of interesting and really beautiful speeches followed. Judge Wilkins made a very happy and eloquent address. He remarked that he had been called to preside over the meeting for the reason, he believed, that he could say more than any other present of the excellent citizen and profound jurist, whose connection with the Bench and the profession was so shortly to be severed. He knew Judge Lewis for a number of years, both as a Judge and a citizen. He knew him well, and was happy to be able to bear testimony to his profound legal knowledge as a jurist and worth as a citizen. The Judge then referred to the early history of the Chief Justice, and traced his career from the time when, like Benjamin Franklin, he left his home to become a printer, to a not very remote period, when, by the suffrages of the people of the Commonwealth, he was called to the high position he now occupied. The man whose transcendent abilities and profound legal knowledge were now filling us with admiration and respect, began his life as a poor printer's boy at Harrisburg. Friendless and alone, his great genius carried him over every obstacle, and in the end placed him in a position the highest, he might say, in the gift of the people. There was a lesson in the history of the Chief Justice which the young men of the Bar would do well to study. They should emulate his industry, his application to business, and rectitude of conduct, and in the end their ambition might lead them to the same goal which he had so worthily reached.

"The speaker next referred to the Judiciary of the State, and remarked that now, as ever, he was opposed to the system under which it was chosen. He was



opposed to an elective judiciary. It brought strangers together to decide on the laws of the State, and look at what it does now. It strikes from the bench the highest legal luminary in the Commonwealth, and, at a time, too, when his career of usefulness has not been half run. He would not trust the people with a duty so important as that of choosing a Judiciary. They might elect their Governor, their members of Congress, or their Senators; for, as compared with the Judiciary, their duties were not of much moment; but he desired to see the appointment of Judges rest with another power, and to have their term of office continue, not for ten or fifteen years, but so long as they were able to discharge its duties in a proper and fitting manner. The gentleman continued in this strain for some time, and closed his very interesting address with a beautiful compliment to the guest of the evening, whose virtues and abilities he extolled, and whose example he desired the young men around him to emulate.

"A toast complimentary to the Chief Justice, and expressing regret that his connection with the bench was so soon to cease, 'brought out' that gentleman, and secured for the audience a very happy and well conceived address. The gentleman commenced his remarks by stating that he was weighed down by the kindness which he had experienced at the hands of the members of the Bar, and felt as if he had not language to express his feelings. But a few days ago, he was looking to the period when his judicial duties would cease with pleasure. He had pictured to himself the domestic comfort he should enjoy, the recreation he should indulge in, and the satisfaction he should feel in a trip to the Sunny South and distant lands; but now his feelings were otherwise. The kindness of the Pittsburgh Bar overwhelmed him, and his retirement from the Bench, to which he before looked with satisfaction, would bring him many regrets—regrets, because it separated him from the true and warm-hearted friends who then surrounded him.

"The learned gentleman then referred to his brethren on the Bench," the *Chronicle* continues, "and spoke in the highest terms of their abilities. Judge Armstrong

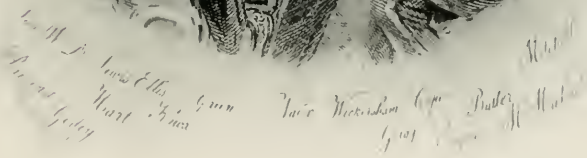
he knew in Williamsport. They were boys together, and many were their struggles in the Lycoming courts for the mastery. He was an old and valued friend, and he felt proud to be able to bear testimony to his worth as a man and profound knowledge as a jurist. Of Judge Woodward he could say much. Their intimacy and intercourse had always been of the pleasantest character, and he felt sad when he reflected that their associations were so soon to be sundered. He would not speak of brother Woodward's public life. It was well and widely known, and spoke for the character of the man in much stronger terms than any language he might use on the subject. Judge Knox, he knew when a little boy playing marbles in the street. He had grown up, as it were, under his eyes. He watched his admission to the bar, then his course in the Legislature, and saw, with the most intense satisfaction, his elevation to the Bench. It didn't take him long to get there, either—in fact, it didn't take Judge Knox long to get anywhere, so brilliant were his acquirements and agreeable and pleasing his manners.

"Judge Lowrie," continues the *Chronicle*, "was not present, but the speaker knew him well. He was an ornament to his profession and the Bench, and he would part with him with regret. In short, his associations with his brother Judges were of the most pleasant character throughout, and long, long would he remember them. He felt pained that they were about to be broken off, but he could not help this. A life of labor had nearly worn him out, and he desired retirement. He knew the members of the Pittsburgh Bar well. They might think he did not know them, but he knew every one of them, and all about them. They must not look astonished now, for it was a fact—he knew them, but he knew nothing bad about them. They were upright, eloquent and intelligent, and should ever command his esteemed respect. The gentleman spoke in this way for some time, and closed his address by toasting the Pittsburgh Bar, and expressing the deepest sorrow that his association with its members was so soon to cease." He was followed by Judges Armtrong, Woodward, Knox, Williams, McClure, Shaler and Shannon and various leaders

of the Bar, Judge Woodward amusing the company by a humorous description of one of the Chief Justice's early efforts at the Bar.

Almost exactly a month after this invitation, and but ten days after his actual retirement, namely, on December 18th (1857), the "Auld Lang Syne Party" of Philadelphia, of which he was a member, invited him to a dinner "at Dorsey's," on the 22nd instant. Shortly before this there was issued in Philadelphia an American edition of Burns' Poems by one of this "Auld Lang Syne Party" in honor of that social club, which also thus became a species of memorial of the Chief Justice's retirement, as the frontispiece of the volume was an engraving of the entire "Party" at a dinner, in the act of joining in the song of "Auld Lang Syne." "But," says a current review of the volume,<sup>1</sup> "it is to the charming vignette that we would especially refer. This will repay more than a cursory glance. It represents a company of gentlemen seated around the festive board, where wine, and light, and song, are conspiring to give cheer and delight, and who are now in the attitude of singing the chorus of 'Auld Lang Syne,' and, hand in hand, are pledging each other's health—in a word, laying the solid foundation of a happy 'lang syne' for future memory. Nor is this all: these gentlemen are not the mystic creations of the painter and engraver, but 'counterfeit presentments' of real, living men, grouped by their friend, the publisher, as an illustrious American illustration of Burns' song. These are, unless our Lavater memory has deceived us: Chief Justice Ellis Lewis, a man known not more for his eminent fame as a jurist than for his noble virtues as a man; near him is William D. Lewis, an eminent citizen of Philadelphia, formerly Collector of the Port; seated appropriately at the head of the table is John Grigg, Esq., a man of great wealth and influence, but, besides, as honorable a gentleman, as distinguished a social character and as benevolent a man as the country can produce; Morton McMichael, the famous editor and unrivalled orator, is there; John C. Knox, the distinguished Judge of the Supreme Court; hearty Louis A. Godey, of the 'Lady's

<sup>1</sup> *The Home Journal* of December 19, 1857. E. H. Butler & Company were the publishers of this book.



From an engraving in possession of the Pennsylvania Bar Association, Philadelphia



Book'; learned and clever Professor Hart, of the High School; there, too, we recognize an old West Pointer, Captain Coppee, of the United States Artillery, who has given up arms for the civic toga. Besides these are Mitchell, the pleasant Roanoke of the Knickerbocker; philosophic Pancoast; Green, the surgeon; Cope and Wickersham. Rising in his chair, and joining with heart and hand, is Butler himself, like the King of Misrule. But, stay; who is that hearty man who faces us as lord of the ascendant, and either guides or starts the music? That is the Chief Magistrate of Philadelphia, Hon. Richard Vaux—a man of generous sympathies, high integrity, and most genial heart. Him we know well 'lang syne.' Such is the 'Auld Lang Syne Party' who grace the frontispiece of the new edition of Burns. The fancy is new, and it has been most happily executed. Many of the faces (especially that of Mr. Grigg) are excellent likenesses. Although they were originally engraved in England, they were entirely retouched, and altogether improved, by Mr. Sartain, of Philadelphia. The original drawings are by Schmolze, the Philadelphia artist."<sup>1</sup>

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<sup>1</sup> The engraving which is here reproduced is in possession of the Pennsylvania State Bar Association's historical collection in Philadelphia.



CHAPTER XIV  
HIS COUNSELS ON PUBLIC AFFAIRS. CORRESPONDENCE  
WITH TANEY AND STANTON

1858-60

Scarcely had the echoes of "Auld Lang Syne" died away, with its prospective joys of retirement for ex-Chief Justice Lewis, when the message of President Buchanan appeared, in which he acknowledged the legality of the Lecompton Constitution and recommended the admission under it of Kansas as a state. The bloody struggle of the slavery and anti-slavery elements in that unhappy territory roused the entire land, and mass-meetings of all sorts were held for and against the course of the President. The Democracy of Philadelphia issued a call for a mass-meeting at Jayne's Hall, on Chestnut Street below Seventh, for the evening of Monday, the 28th [December], and urged the ex-Chief Justice to preside. After several refusals he finally consented, and with the hall full to overflowing, and most of the one hundred and thirty-two vice-presidents on the platform, while the hurrahs of the delegations that filled the street outside could be heard, he rose amidst prolonged applause and began his introductory address.

"I beg leave," he said, "to tender my sincere thanks to this meeting for the honor conferred in selecting me to preside over its deliberations. At the same time, justice to my own feelings requires me to say that I accept the honor with reluctance, and had repeatedly declined it when proposed by the Committee of Arrangements, because, when I retired from the highest judicial station in my native State, and declined the nomination for re-election so generously tendered by the Democratic Convention, it was my sincere desire to be relieved from the responsibilities of all prominent public or political stations. But the wishes of my fellow-citizens have been manifested in a way not to be disregarded, and I

yield to their wishes with profound acknowledgments for this high mark of their confidence.

"We are assembled," he continued, "to deliberate on the measures of the President in relation to the admission of the Territory of Kansas into the Federal Union, as an independent State. By the Constitution of the United States, Congress possesses the power to 'dispose of and make all needful rules and regulations respecting the Territories or other property belonging to the United States.' This clause has been thought, by some, to be confined merely to the regulation of the Territories, *as property*, and not to the government of the *people* inhabiting the Territories. It may be safely conceded that this is correct. But it must be remembered that the Government has the power to declare war—to make peace and to make treaties. In the exercise of these powers, Territories may be acquired either by conquest or by treaty. When the Government, by either of these methods, acquires the jurisdiction over and the right of property in a Territory, the right to make laws for its government results as a necessary incident to the acquisition. Although the United States Government is one of limited powers, it is certainly supreme within the limits prescribed; and, in addition to the powers expressly granted, possesses all the powers necessary to the exercise of authorities conferred by the express terms of the Constitution. Under this construction of the Constitution, Congress has, ever since the foundation of the Government, claimed and exercised the right of sovereignty over the people of the Territories; and the doctrine of popular sovereignty has never been carried to the extent of claiming for the people of the Territories a right to set themselves up in opposition to the sovereign power of the United States. No territory has ever been organized for governmental purposes but by authority of Congress, and in conformity to its enactments. The people of a territory, before it is organized for the purposes of government, are bound by the Constitution and laws of the Union as far only as they apply to such territory. With this exception, the inhabitants of a territory, before it is organized, are in a state of nature—each man prescribes laws for himself and administers

justice to himself in his own way. As all have an equal right in this respect, no one has rightful power over another. Sovereignty implies superiority. Where all are equal there can be no such thing as sovereignty. Sovereignty, instead of existing among people in a state of nature, has no existence at all until government be established. The creation of governmental power is the birth of sovereignty. Even popular sovereignty has no existence until the aggregation of individual rights, given up for the purpose, is vested in the appointed authorities. But in the case of the Territories belonging to the United States, the sovereignty exists in the Federal Government. The people of the Territories have no powers beyond those secured to them by the Constitution of the United States, or voluntarily granted by Congress. It is only by authority of Congress that they can have a Territorial Legislature. It is only under the same authority that they can rightfully be admitted into the Union as independent States. In accordance with these principles, Congress, by act of 30th May, 1854, organized the Territory of Kansas. It was declared to be 'the true interest and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way.' Under this act Kansas, when admitted as a State, was to be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission. On the 19th February, 1857, the Territorial Legislature of Kansas passed a law providing for the election of delegates to a convention, to meet on the first Monday of September, for the purpose of framing a Constitution preparatory to admission into the Union. Delegates were elected under this law, and they assembled in convention and framed a Constitution. The convention, by a close vote, decided to submit the provisions respecting slavery to the people, and directed an election to be held for that purpose on the 21st of the present month. Thus the people, by their representatives, proceeded 'in their own way.' The result of the election has not reached us. What new aspect the case may ultimately present, it is impossible at this moment

to foresee. But the President proposes to abide the result of that election, and admit Kansas into the Union at once under the Constitution thus framed. What objection can there be to this? All will agree that the affairs of Kansas have already occupied too much of the nation's time and attention. The sooner we clothe that unfortunate Territory with the powers of a State, and thus localize the slavery question, the better for Kansas and the better for the Union. But it is objected that the whole Constitution ought to have been submitted to the people, and not the slavery question alone. The answer to this is that neither the Act of Congress nor the Act of the Territorial Legislature required the convention to submit the Constitution, or any part of it, to the people. If the delegates of their own accord thought proper to take the opinion of their constituents on the slavery question, it does not follow that they were bound to submit every other question. As they acted within the scope of their powers derived from the people, the presumption is that they had good reasons for the course which they thought proper to pursue. They knew that a portion of the population were in open rebellion against the law under which they were acting, and would oppose *any* Constitution which they might frame; and they also, doubtless, knew that their constituents, who were supporting law and order, were satisfied with every provision of the Constitution, except that which had relation to slavery. This was submitted, because there was an honest difference of opinion about it. It is complained that the people cannot vote on the slavery question without voting for the Constitution. This is mere matter of form, because the other provisions of the Constitution are not intended to be submitted to the people. Their voice is already expressed through their delegates. The Constitution, with the exception of the slavery clause, was framed by their representatives, to be submitted to Congress, where the legal and ultimate sovereignty undoubtedly at present resides. It is further objected that the Legislature which authorized the election of delegates was not legally elected. It is sufficient for us to know that it is the only Legislature which has ever been acknowledged by the

Government of the United States—that it is the Legislature *de facto*; and, until its powers are revoked or annulled by Congress, its acts must be treated as valid. It is also complained that the delegates who framed the Constitution were not voted for by a majority of the people. The answer to this is, that all the people had a right to vote and that those who declined to exercise that right have no just cause to complain. The call was made by the only Government known to exist. The people had an ample opportunity to vote for representatives to frame a Constitution, and thus they had tendered to them the usual rights of popular sovereignty. If they desired more, they should have demanded it at the hands of their Territorial Legislature. Failing in this, they should have influenced the action of their Constitutional Convention. If that action does not suit them, they can amend their Constitution in a very short time after their admission. In no view of the case does it appear to me to be proper that the whole nation should be disturbed continually with what is properly a merely local question. Let Kansas be admitted at once, and then let her settle this question for herself. The largest privilege of popular sovereignty is conceded to her when she is admitted as a State on an equal footing with the other States. Any course which would hold her any longer in the helpless and distracted condition of a Territory must surely be anything but a fair extension of the privilege of popular sovereignty.”<sup>1</sup>

Other speakers followed and letters were read from members of President Buchanan’s cabinet and others. The Attorney-General, ex-Chief Justice Black, wrote, among other things: “The President seeing a Constitution about to be established for Kansas by legal authority, what could he do? He might regret some things that were done—he might disapprove of others—he might wish that it had been different in many respects; but still it was the lawful work of a lawful body. Could he set it aside? Could he order the election not to be held under it? Could he drive the people away from the polls? He had no more power to do any of these things than he had to veto an act of the Pennsylvania

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<sup>1</sup> The *Daily Pennsylvanian* of December 29, 1857.



Legislature. \* \* \* \* \*

Of one thing I am sure: that James Buchanan is the last public man in the country who need fear the place which will be assigned to him in the history of these proceedings; and this will be proved to the heart's content of all who live long enough to see the accounts made up."<sup>1</sup> The meeting passed strong resolutions endorsing the position taken by the President and the immense demonstration closed, and with it the ex-Chief Justice believed he closed his relations to public affairs.

Such was not to be, however, for during the winter of 1857-8 the Legislature considered a law to provide for a revision of the penal code of the State, which was finally passed and approved on April 19, 1858.<sup>2</sup> Immediately Governor Packer, by means of the National Telegraph Lines, wired the ex-Chief Justice: "Will you accept of the post of commissioner to revise the Penal Code—answer immediately." Judge Lewis replied favorably, and the following day the Governor sent to the Senate the name of ex-Chief Justice Lewis, Hon. Charles R. Buckalew and Attorney-General Knox as the commission in full.<sup>3</sup> The act provided that the work should be reported by April 1, 1859, and allowed a salary at the rate of \$2,000 per annum. The commission entered upon its work at once, although Mr. Buckalew's place was soon taken by District-Attorney David Webster, of Philadelphia. This prevented a trip abroad which Judge Lewis had so favorably contemplated this year that he already had letters of introduction from President Buchanan to Lord Chief Justice Campbell and like dignitaries in Great Britain and elsewhere.

What the results were is stated a year later in a letter from Judge Lewis to the Governor. "As soon as I was appointed one of the commissioners to revise the Penal Code of Pennsylvania," said he, "I diligently devoted to the duties of the appointment all the time, reflection and labor in my power to bestow. As the period for making the report approached, it became manifest to the whole Board that it would be impossible to do justice to a subject of such magnitude within the period

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<sup>1</sup> *The Daily Pennsylvanian*.

<sup>2</sup> *Laws of Pennsylvania*, 1858, p. 524.

<sup>3</sup> *Pennsylvania Archives*, Fourth Series, Vol. VIII, p. 78.



limited by the act of Assembly. An application was therefore made for an extension of time. But this, it appears by a recent vote of the Senate, it is not deemed expedient to grant. It therefore becomes necessary either to unite in reporting a Penal Code which has not been so thoroughly examined, revised and considered as to be satisfactory, even to the commissioners themselves, or to tender my resignation. I adopt the latter alternative without hesitation.

"It is unnecessary to say to an Executive, who has long been personally familiar with the manner in which I have heretofore performed all my public duties, that I have not *neglected* the duties of this important appointment. I accepted the appointment, originally, and united in the application for a brief extension of time afterwards, from the single desire to render a useful service to my native State. I think I am rendering that service faithfully while I stand on the ancient statutes and usages with which the people and the profession are familiar, until perfectly satisfied, after the most careful consideration of the subject, that a change has become necessary.

"I have not drawn from the Treasury any compensation for my services on this commission, and I decline receiving any part of the salary provided by the act under which I was appointed.

"Thanking you for the honor conferred, I hereby resign the appointment of commissioner to revise the Penal Code of Pennsylvania. Yours, very sincerely

"ELLIS LEWIS."<sup>1</sup>

"The refusal of the Senate to grant any more time," said the *Public Ledger* editorially on April 6th, "because it involved additional expense, was unwise economy, either of time or money. It has broken up the commission by the voluntary withdrawal of Judge Lewis. The progress already made will be lost, and the whole work will have to be begun anew. \* \* \* \* \* A work of this kind, it is evident, must be done deliberately, to be of any value at all, and the time consumed, as long as it was within the bounds of reason, ought to have been considered an evidence of the care with which the work was executed."

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<sup>1</sup> *Public Ledger*, April 6, 1859.

The result was that Judge Edward King was appointed in his place and the Revised Penal Code report did not appear until 1860, and when it did appear it said that "The term of the resolutions under which their authority is derived do not seem to the commissioners to contemplate a codification of the criminal law. Such a work would have demanded an extent of time and labor entirely inconsistent with the prompt and early report required by the resolutions, and judging from the results which elsewhere have followed such attempts, we think that the legislature adopted the more judicious course, in confining our duties to the collection, revision, amendment, and systematic arrangement of the penal statutes."<sup>1</sup> Whether there was any friction on the question of a full codification while Judge Lewis was on the committee or not cannot be determined apparently, but this reference of the committee and the ex-Chief-Justice's remarks about "ancient statutes and usages" might suggest that there was some such question and that he himself was against codification. As the commission finally took the same ground the aim of the ex-Chief Justice, in that respect at least was secured, and, indeed, it may have been that the whole commission had resisted outside pressure for codification.

During the spring and summer following (1859) he was at last giving himself up to the joys of retirement. Judge Lewis had often been in the habit of wooing the Muse, as his father did before him, and verse over his name had appeared in *Godey's*, the *Home Journal* and other papers and periodicals from time to time. One of these, written on May 9th of this year, while he was visiting a friend's new country seat on Long Island, appeared in the *Century* of New York on July 9th and is a good example of his poems. The new country seat was built in a forest in which the pine predominated, suggesting to the Judge that the name should be *Pinchome*. This was adopted and the next morning on his departure he handed his hostess the following species of enlarged "*Tannenbaum*":

"PINEHOME

"The inmates of the new-built hall  
Debated of the name  
The Pines o'er-heard, and one and all  
Did thus prefer their claim:

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<sup>1</sup> Report on the Penal Code, 1860, second paragraph.

"We've kept this spot, through sheen and gloom,  
By long possession right;  
But we have freely yielded room  
To fix thy dwelling site.

"We've given thee joists, and beams and floors,  
And rafters strong and true;  
We've yielded frames and trusty doors,  
And furnished columns too.

"We've filled thy house with useful ware;  
We give thee light and heat;  
And it has been our constant care  
To bless thy lovely seat.

"The oak, the beach, the chestnut tall,  
The apple, peach and pear  
In summer, spring and teeming fall  
As summer friends, are fair.

"But foliage, fruit and fragrant bloom,  
Like summer friends, depart,  
And leave thee, in the winter's gloom,  
With sad and lonely heart.

"'Tis then the constant Pines are seen,  
In faithfulness and truth;  
They cheer thee with their foliage green  
In never-fading youth.

"When skies are dark and winters drive  
The snow and wind and hail,  
The Pines their friendly greeting give  
A whisper "*all is well*."

"Fear not! Our strength has stood the storm  
For more than fifty years;  
We'll break the blast that threatens harm:  
Dismiss all idle fears.

"If lightnings come too near thy walls,  
We'll guard thy home with care;  
Our limbs and spears shall from thy halls  
Conduct the dangerous fire.

"Then let us thy Penates be!  
Instead of transient bloom,  
We give perennial constancy  
To thee and thy PINEHOME.'

"The Pines then ceased—the touching word  
(Repeated by the guest)  
Was chosen with the full accord  
Of every grateful breast."<sup>1</sup>

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<sup>1</sup> Chief Justice Lewis' daughter, Mrs. Juliet H. L. Campbell, wife of Hon. James H. Campbell, an able lawyer and sometime member of Congress, was so well known as a writer and especially for her poetry, that the collections of Griswold, Read and Miss May enrolled her in the list of "The Female Poets of

The fierce campaign of 1860 caused him great anxiety, but it did not draw him from retirement. The November election, in which the Republicans had elected Lincoln of Illinois as President, precipitated the rumbling storm in the South. The threats of disunion made so long by the Abolitionists and their avowed contempt for a Constitution which upheld slavery, had at last been met by the extremist slaveholders with threats to themselves break that Constitution should the Abolitionists win the contest. There were evidences by early December that they were making preparations to make good their threats. It was rumored, too, that Chief Justice Taney, then at the advanced age of eighty-three years, was to retire from his important post, but denied by the Chief Justice himself. Judge Lewis did not agree with President Buchanan's ideas in some respects, and on December 8th he sat down in his West Penn Square library and wrote the following letter congratulating the aged jurist and expressing his opinion of the President's course.

"I have often wished," said he after a paragraph of reference to a private matter, "that the condition of the country was such as to enable you to retire from the very arduous duties of your high station. I have taken so much comfort and enjoyed so much health, since I retired from the Chief Justiceship of Pennsylvania, that I could not help wishing you the same blessings. But I am greatly rejoiced to learn that you feel your obligations to the country, in her present unhappy condition, above the claims of personal comfort. It is very clear to my mind that your retirement, at this time, would be dangerous; and might furnish grounds for comment which your best friends would not desire to hear. I do not understand the President, when he treats of Executive duties, in executing the laws. It is not the doctrine of "The Proclamation," as I understand it; and I do not see any reason why the *revenue*

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America." In 1857 her "Eros and Anteros; or, The Bachelor's Ward, by Judith Canute," was issued. Mrs. Campbell, who was born August 5, 1823, died December 26, 1898. She was the Chief Justice's eldest child. His second child, Elizabeth, died in infancy. Ellis, his third, was born March 9, 1830, but died before reaching his majority. James, born June 2, 1832, now deceased, became a Major in the United States Marine Corps, and his sister, Ann, who was born March 19, 1835, and died March 8, 1893, married Captain James Wiley, also of that branch of the military service. Aside from an infant son, deceased, the Chief Justice's only other child, and the only one now living, is Miss Josephine Lewis, of Philadelphia. Captain Wiley's home at one time was "Hardwicke," near Lancaster, the country seat built in early days by the distinguished editor of *Smith's Laws*, Judge Charles Smith.

should be collected by force, if the *judiciary* and the *other branches of national government* are not to be supported by the same means. There may be many considerations of expediency in the present crisis, but there should never be any hesitation to maintain the doctrine that the federal government has, like all other *governments*, the means of self-preservation.

"The unnecessary promulgation by Judge Story of the doctrine that the states had no right to legislate ever in favor of fulfilling their constitutional obligations to 'deliver up' fugitives from servitude, has produced the most of the mischief which now afflicts the country, and endangers the Union. When he delivered his opinion, he gained some northern judges over to his doctrines by the argument that to make the constitutional clause effectual it should be construed to be *exclusive of state authority*. 16 Pet. 624. But his son tells us, in the *Life of Judge Story*, 2 vol. 392, that the Judge, when he returned to Boston, spoke of that doctrine thus announced as 'a great point gained for liberty;' so great a point indeed that, on his return from Washington he repeatedly and earnestly spoke of it to his family and his intimate friends, as being '*a triumph of freedom*.' P. 392. The son explains what was meant by '*a triumph of freedom*' in this connection when he adds that it was '*a triumph of freedom*' because it promised practically to *nullify the act of Congress*, it being generally supposed to be impracticable to return fugitive slaves in the free states, except with the aid of state legislation and state authority. P. 393.

"It was this unfortunate opinion," Judge Lewis continues, "which induced the northern states to repeal their state legislation in favor of surrendering fugitives from labor, and to enact laws prohibiting the use of their gaols, and the action of state officers, in aid of such surrenders. I rejoice that in my work on the *Criminal Law of the United States*, ps. 24, 25, 26; in my judicial opinions; and in my action everywhere, I have always repudiated that part of Judge Story's doctrine as unsound and not arising in the case. And I rejoice that my views have been confirmed, on this last point, by the unanimous judgment of the court over which you preside, in the recent case of *Moore v. the People of Illinois*, 14 Howard, 20-21.



"With great respect and the most sincere veneration and regard, I remain your attached friend, Ellis Lewis."<sup>1</sup>

A week later and but five days before South Carolina seceded, Judge Lewis had occasion to state his ideas of public affairs in a letter to an intelligent and well informed niece of his who had requested it. "You ask my views on the condition of the Union," he said. "The Northern States, in their official capacity, and the people of those States, as individuals, preachers and lecturers, have been guilty of the great national sin of breaking their Covenant with their Southern brethren on the slave question. The territories acquired by the blood and treasure of *all* the States are owned by all. The Southern slaveholder has as good a right to settle in such territory, with his slaves, as the northern man with his horses, cows and sheep. The obligation to surrender a fugitive slave is as strong as that which requires the return of any other stolen property. These rights have been disregarded in the northern states, notwithstanding that they have been guaranteed by a Constitution and oaths to support it. It is these violations of the Constitution *on the part of the free states*, that has produced the present peril. The remedy is a simple one: Let the President [Buchanan] fill the vacancy in the U. S. offices in South Carolina, and then send the *army*, the *navy* and the *militia* of *all* the States, if necessary, to support the new officers and execute the United States laws, *until the free states have a reasonable time to pass the necessary laws in fulfillment of their Constitutional obligations. If they refuse to do this within the proper time, let Congress at once acknowledge the independence of S. Carolina and all Southern States desiring to go out of the Union.* Or, perhaps, it w'd be the better course to *turn out of the Union those puritanical* [crossed out]<sup>2</sup> States who refuse to regard the Constitution of the U. S.

"I have given you the remedy" he adds "—but it will not be adopted, and as I see no other adequate remedy, I think that the days of this glorious Union are numbered. Nothing but Providence can save it, and our great national

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<sup>1</sup> Dated December 8, 1860. Lewis Papers.

<sup>2</sup> The crossing out is not so thorough but that the word "villians" can be deciphered, but his judicial spirit overruled it.



sins are so many and serious that we can expect nothing but that the judgment of Heaven will be against us.

"Yours affectionately

"ELLIS LEWIS."<sup>1</sup>

His anxiety at this time was very great, so that four days later than the above, namely, on December 19th, the day before South Carolina announced her secession, the ex-Chief Justice wrote a letter to the newly appointed successor of Jeremiah Black to the office of Attorney-General of the United States, Edwin M. Stanton—then of Buchanan's cabinet—who was an old friend at the Pittsburgh bar. Few letters reveal the chaotic condition of this date more than such a letter from and to such men as the names super—and subscribed in this epistle. "I do not write to congratulate *you* on your appointment to the office of Attorney General," said Judge Lewis, "but to say that I most sincerely congratulate the *country* in being able to receive the services of a gentleman so able and so upright as yourself. It is the misfortune of men elevated to high places that they are scarcely even able to get at the truth as regards the facts, or to get disinterested and independent advice, when they desire to obtain the calm judgment of wise men. Office hunters and office holders think of the fate of poor Gil Blas when he ventured to speak his honest opinion of the production of his master. I believe that in you the President, when he shall desire it, will receive sound and fearless advice.

"In the present alarming state of the country there is great uneasiness at the contemplation of the forts and arsenal in and about Charleston. If Major Anderson and his men should be slaughtered there will be a fearful account to be rendered to the American people. The President ought to have the strongest assurances that reinforcements are unnecessary, in order to justify himself in leaving the public property, and that property consisting of the means of national defense, in its present unprotected condition.

"It may be very sound law," he continues, "to hold that unless the U. S. offices are filled in South Carolina, the contingency for the application of the military and naval power of the Nation to sustain them in executing the law, cannot

<sup>1</sup> Letter to Miss Mary J. Lewis, Philadelphia, dated December 15, 1860, and still in her possession.

arise. But the responsibility of leaving these offices vacant, and thus excusing the omission to execute the law, is a fearful one, for which I hope that the President may hereafter be able to show good reasons. If a burglar threatens to invade my house I would certainly prepare to repel the aggressor, even if my preparations did cause me to get into a little excitement. I wish that the President had energetically executed the laws of the Union, and strengthened the Nation's arm in South Carolina until the Northern States had a reasonable time to come up to their Constitutional duties, in regard to Southern rights. If the Northern and eastern States are too conscientious to be honest in maintaining their own part of the Constitution, then let the independence of the Southern States be at once acknowledged. The fugitive slave law ought to be fairly executed. All state legislation against it ought to be repealed. Nay, more; the states have something more than a *passive* duty in regards to the surrender of fugitive slaves—they are under obligation to *aid* in the *act of delivery*. Prigg's case has a *dictum* to the contrary, but Moore's case repudiates that dictum.

"As to the territories," he continues, "the slave-holding states have as good a right there as the non-slave-holding states; and if they have rights it is very clear that their rights ought to be protected by law.

"I write this in kindness, and not in any spirit of fault-finding. I have been the friend of the President in most of his measures. Personally I would do anything to save him from harm. If you can aid him in steering the National ship through the troubled waters, I know that you will do so independently and in good faith. Office cannot elevate your high standing, and the loss of it can do no harm. God bless you my dear friend, Yours truly,

"ELLIS LEWIS."<sup>1</sup>

Mr. Buchanan's reasons for his course are well-known to all readers of his life by Mr. George Ticknor Curtis, and Mr. Stanton's attitude at this time is happily expressed in his reply to ex-Chief Justice Lewis two days later, i. e., the 21st, from Washington. "On my arrival home this morning after ten days absence at Cincinnati, I found your favor of the 19th. The kind expressions of your regard and con-

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<sup>1</sup> Copy. Lewis Papers.

fidence penetrates me with a deep feeling of gratitude. To have the confidence and regard of men like yourself has been the struggle and earnest desire of my life and the appearance of having acquired it is the highest reward that can be attained.

"To the events of the last ten days," he continues, "I have been a stranger except so far as they appear in the public prints. I have not yet entered upon the duties assigned me by the appointment of the President and nothing but the sad condition of public affairs could induce me to enter the office. The views you express correspond with my own judgment so far as I am advised upon the subject, and my aim will be to carry them out in such manner as shall preserve the Government.

"Your advice and counsel will always be highly acceptable to me, for there is no one in whose sagacious wisdom and sound patriotism I have more confidence. Since my return I have not had any interview with any one of the officers of Government and am therefore quite ignorant of the real state of affairs and the proposed policy except so far as they are disclosed in the public prints.

"I hope," he adds in closing, "you will favor me with your confidence and views on the subjects now so deeply interesting to every American citizen and fraught with the destiny of our nation and a race. By God's help every effort of mine will be directed to the firm and faithful discharge of such duties as may devolve upon me, and with the aid of counsel from wise men like yourself, and the Divine helping, I still feel strong hope that the impending dangers may be passed in peace and safety.

"With sincere regard and a grateful sense of your kindness, I remain, Truly yours,

"EDWIN M. STANTON."<sup>1</sup>

Scarcely had Mr. Stanton's letter been received when Chief Justice Taney, after a delay due to pressure of duties and ill-health, found time on Christmas eve to reply to Judge Lewis' letter of the 8th instant above mentioned. "As regards public affairs," he writes, after an opening paragraph on a private matter, "they are as you say full of gloom—which every day becomes darker and darker—. It is impossible to foresee to what they may lead—and I

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<sup>1</sup> Lewis Papers.



CHIEF JUSTICE ROGER B. TANEY

From a card photograph in the Lewis Material,  
in possession of the Pennsylvania Bar Association, Philadelphia



do not venture to form an opinion as to the probable result. End as they may we are to pass through a season of great suffering and danger. You are right in supposing that at such a time I should not think of resigning my place on the Bench of the Supreme Court. I am sensible that it would at this moment be highly injurious to the public—and subject me to suspicion of acting from unworthy motives. How the report got into the newspapers I do not know. It was a pure invention, for I had never said a word like it—and it has just as little foundation in truth, as the opinions on public affairs, which from time to time I see imputed to me in the newspapers—and which I never entertained and never uttered.

"I have always thought," he continues, "that the decision in the case of *Prigg vs. the Commonwealth of Pennsylvania*, an unfortunate one and not sufficiently considered by the court—and I am persuaded that some of the Judges who formed the majority did not view the case in the same light, with Judge Story—nor intend to accomplish such an object. It certainly gave an impulse to the abolition feeling in the non-slave-holding States and perhaps laid the foundation for all the mischief which has since followed. The decision I still think, was an erroneous one—and contrary to the plain words of the Constitution.

"To-morrow," he adds in-closing, "is Christmas day—and allow me according to our old Maryland custom to wish you and yours a happy one—and many happy returns of the season.

"With great respect and regard

"I am Dr. Sir your

"friend and Servt.

"R. B. TANEY."<sup>1</sup>

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<sup>1</sup> Lewis Papers. On February 15, 1861, scarcely two months later than the Tanney letter, Judge Lewis inclosed to Mr. Buchanan a copy of young Story's remarks on his father's views of the *Prigg* case, and reiterating that "that decision has been the chief cause of most of our present difficulties with the Southern States."



## CHAPTER XV

### HIS CLOSING YEARS AND HIS DEATH IN 1871

The eventful year of 1861 found Judge Lewis a man old beyond his years. He had begun to show it for some time past. His work had always been at a high pressure such as few men care to allow and such as still fewer men can endure. It is said that on more than one occasion when he desired especially that the pressing work in hand might be finished at a given time, he had worked late into the morning hours, and when nature refused to keep the gait he had set and drowsiness delayed, he would take a cold plunge bath to rouse his jaded powers, return to his desk and work till morning.<sup>1</sup> And nature debited these overdrawings with lowered vitality. Even in 1856, when not yet threescore years of age he showed it overmuch. During the spring of that year, while in Washington, visiting his daughter, the wife of Congressman Campbell, he attended President Buchanan's reception. "Note the elderly gentleman," said a writer describing that function in the *Washington Spectator*, "conversing with Mr. C. of Georgia. He is a good deal wrinkled, for however noiseless the tread of the grey-beard, his foot-steps are always discernible. He has the sort of face you would instinctively trust. Looking at it you would put your whole worldly estate—your character—into his hands and feel that all were in safe keeping. Yes, dear reader, there is goodness in that face; as to distrusting him, or his advice, we should almost as soon think of distrusting the Bible. This gentleman, so distinguished for simplicity of character and warmth of heart, is Judge Lewis, Chief Justice of the Supreme Court of Pennsylvania."<sup>2</sup>

In April, immediately after the fall of Fort Sumter, the Bar of Philadelphia held a meeting to raise funds to provide for the families of volunteers going to the front, and

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<sup>1</sup> Related to the author by Miss Mary J. Lewis, of Philadelphia, a niece of the Chief Justice.

<sup>2</sup> *The Spectator*, Washington, D. C., of April 5, 1856.

Judge Lewis immediately sent his check for one hundred dollars. As the year passed his health was such that it was determined that he should take the long delayed European tour, and in 1862 he did so. His itinerary included Great Britain, France, Germany and Italy. But little is known of the journey, except that when he reached Genoa and saw the birthplace of Columbus, before which was a new unveiled statue of the discoverer, he grew reminiscent of the home-land and was led to write a letter to the old printer-publisher friend of his youth, General George P. Morris, who, with Nathaniel P. Willis, had made the *Home Journal* so well known. The letter, dated Hotel Teder, Genoa, September 3d, 1862, was published by Morris. "In passing up the channel between Ireland and Wales," to quote but one or two extracts, "I saw Anglesea Island, and was of course reminded of the last great struggle which the Druids made to preserve their liberties, their history, their religion and their learning. That their learning surpassed that generally existing on the continent is evident from the fact admitted by Cæsar himself in his writings, that the young men of Gaul were sent to Britain to be educated. But all the learning and the history of the Druids perished at Anglesea Island under the brute force of the Roman barbarians."

"I have seen so many things in this Old World," he adds, "which bring up a rushing crowd of memories of things read of in youth, that it would take a quire to tell you half of them." He was much impressed with relics of Charlemagne at Aix-la-Chapelle: "I saw some of the bones of the great Monarch. I sat upon his marble throne, held his sceptre in my hand, and his golden crown was placed over my head; but although my head is above the average size, the crown descended very readily to my shoulders. This, and the paintings and statues of the emperor, show that he was a man of gigantic proportions." Lake Como seemed to afford him great delight, and he devotes much space to it. "My health has improved very much," he adds in closing. "Let any man try travelling—on foot, on mules, over mountains, seas of ice, saying nothing of crossing the ocean—and I believe, if he survives, his health will be improved."<sup>1</sup>

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<sup>1</sup> Lewis Papers.

On his return his days were passed in the quietness appropriate to the Indian summer of one's years. With the prospective changes about Penn Square, on whose site was to rise the great pile now known as the Public Buildings or City Hall, originally designed to be the centre of Penn's city; and the site of his West Penn Square home on which was to rise the great terminal of the Pennsylvania Railroad, both of which were destined to make that centre a reality, Judge Lewis sought a new home farther out at No. 302, South Fortieth Street; where he passed his remaining years.

It was while here, late in August, 1863, that ex-President Buchanan wrote him from "Wheatland": "'Should auld acquaintance be forgot'? I very much desire to see you and think that in this hot season, you might pass a few days agreeably at Wheatland. You shall receive a most cordial welcome. Besides, I desire to consult you on some matters important to myself and probably to the public." The ex-Chief Justice accepted the invitation, but something now unknown, possibly, ill-health, prevented the visit.<sup>1</sup> Late the following spring—or early in June, 1864—he extended the invitation of the Saturday Evening Club of Philadelphia to the ex-President to be their guest at their next meeting. The reply of Mr. Buchanan was rather interesting. "I regret that I cannot be with you," he wrote, after acknowledging the invitation. "Age loves home and this feeling has grown upon me so much that I doubt whether I shall even visit the Bedford Springs during this season. When I gave you a pressing invitation to visit me last fall, this was partly selfish. I desired to consult you respecting certain portions of my Record. I had to prepare it without assistance. Two members of my cabinet are with the Rebels, three with the Republicans, Holt, Stanton and Dix. Black so engaged in making money, and I am glad successfully, that he could not spare the time, and Toucey, 'the noblest Roman of them all,' at such a distance and he and his wife suffering from feeble health, that I made no requisition upon him. Under these circumstances I wrote to you not only from a sincere desire to see you, but from a wish to consult you about diverse legal matters: but I think the record will do as it stands.

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<sup>1</sup> Letters of August 22d and 28th, 1863, among the Lewis Papers.



CHIEF JUSTICE ELLIS LEWIS  
about 1865

From a photograph miniature by Francis Brown,  
in possession of Miss Josephine Lewis, Philadelphia



I would not, if I could roll back the tide of time, change a single fact on which it is founded."<sup>1</sup>

These years were not eventful ones to the venerable ex-Chief Justice. He was unconnected with the great national convulsion. Probably it seemed to him as he expressed it in verse, under the title of *Time and the Acorn*, published in the *Home Journal* in 1858. It was a dream of history and the progress of Father Time and his scythe——

"And his wings, like an eagle's, as upward it flies,  
In its course through the air to its home in the skies,  
Keep their flight, till the young, like the old, become grey,  
And proud nations arise, and then sink in decay.  
And the period was filled with their crimes and their jars,  
With the floods and the fires, and the wrecks and the wars,  
That are brought upon man by his wicked career,  
In the justice that Heaven administers here."

And further on he says:

"All the deeds of this life leave results that abide,  
When the actions themselves float away in the tide;  
Be they base, be they great, be they simple or wise.  
They leave marks which defy even Time as he flies."

His philosophy of life, which stood as his bulwark for at least the latter half of his career, was probably not better expressed by him anywhere than in some blank verse published in *Godey's Lady's Book* many years before and republished at the beginning of the Civil War. It was entitled

#### "PROPERTY, FAME, LOVE, RELIGION.

##### "WHAT IS PROPERTY?"

'Tis a barque full freighted with the ills of life,  
Possession and Pursuit alike afflict—  
"He that is without it wastes his precious years,  
Scheming by day, and dreaming all the night  
Of means to grasp the phantom.  
He that has it, has a world of care,  
To save it from destruction and from man's rapacity,  
From claims in Chancery, and from writs at law,  
From fall of stocks, and frauds, and sad default—  
Of those whose agency he needs must trust;  
All anxious to secure the splendid curse  
That blights the peace of all its votaries,  
Barings, or Rothschilds, Astors or Girards,  
Whose millions and whose lives of constant labor  
Are paid as cheaply as the slave is paid,  
With food and raiment, and, when dead, a grave;

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<sup>1</sup> Dated June 23, 1864. Wheatland. Lewis Papers. The "record" here referred to was the "Autobiography" afterwards published.



With this posthumous evil superadded  
 That spendthrift heirs and reckless devises  
 May scatter their broad earnings to the winds,  
 In thoughtless prodigality, till naught be left  
 To witness that such men have lived and slaved  
 And died, but what the world calls Fame!

"AND WHAT IS FAME?

"'Tis the vibration of the viol's string,  
 'Tis but the echo from the distant hill,  
 The bare reverberation of a sound,—  
 The shadow, not the substance of men's deeds,  
 The deeds once over and the substance gone,  
 The echo ceases, and the shadow goes,  
 As things that have been and are now no more.  
 If wealth and Fame alike shall fail  
 To recompense a life's long struggle,  
 What else shall restless men pursue?  
 An inexperienced and confiding youth  
 In the warm gush of early feeling cries:—  
 That Friendship's balm repays its cultivation,  
 And gives a lasting solace to the mind.

"AND WHAT IS FRIENDSHIP?

"'Tis to be cradled in the tall tree top  
 In summer's sunshine; with o'er-hanging branches  
 Waved by gentle zephyrs to and fro,  
 Spreading their shady bowers and rustling leaves,  
 Like many thousand slaves, to fan the air  
 We breathe, and give it healthful circulation.  
 But, when the winter's storm approaches,  
 The zephyrs leave us to the whirlwind's rage,  
 The sycophantic leaves withdraw their shelter,  
 The branches give no longer their support,  
 But yield and break beneath our pressure  
 Like human faith when most we need its stay.  
 What is there then in this broad world  
 On which our best affections can repose?  
 Some gentle maiden, with her bright black eyes  
 Dancing with joy, amid the crimson tide  
 That gathers in her face, as first she owns  
 The deep emotions of her trusting heart,  
 Looks archly up and softly answers 'Love!'

"AND WHAT IS LOVE?

"'Tis the bright sun of early morn,  
 Lending his radiance to the dew-drop's 'round,  
 As freely as he lights the stars of Heaven,  
 And touching all the things of Earth  
 With Heavenly rainbow hues.  
 But, when the evening comes,  
 The spangling dew-drops are exhaled and gone,  
 The sun descends into his dusky grave  
 And all the brightness of the glittering scene,  
 Tint after tint is swept from view,  
 With naught to stay the gathering gloom  
 But dim reflections from the Western sky

Of light now passed away—  
 The fading memories of our early loves  
 Estrang'd, or hushed in death!  
 What then shall give to wearied man  
 The solace of repose? What stay his soul  
 In the dark hour of sad extremity?  
 When all is gone, and earthly hopes are fled,  
 When all the cords that Love has twin'd are broken,  
 When Wealth and Fame and Friendship prove unreal,  
 Religion only can true good supply.

"AND WHAT'S RELIGION?"

"'Tis not the fiery zeal that to the stake  
 Condemns a brother for opinion's sake;  
 'Tis not self-righteous dogmas dealt around  
 By each sectarian bigot, who forgets,  
 In mystic speculations, Christian love,  
 And all the rights of justice and true charity.  
 But this it is;—to fix our hopes on things to come,  
 To offer up to God our heart's devotion,  
 Yielding to Him our all confiding faith;  
 To love our neighbors as we love ourselves,  
 And bless them with the charities of life;  
 Doing to others as we would that they  
 Should, in like circumstances, do to us.  
 Unlike the Crescent of the Musselman,  
 Which curves to suit the passions of mankind,  
 And fills pure Heaven with vile lusts of Earth—  
 The Christian's Cross, with transverse arms,  
 Strong emblem of united Faith and Works,  
 Points first to Heaven—then round upon our brothers,  
 In blood and suffering pleading with our race  
 To crucify the passions and the evil thoughts  
 That incapacitate the soul for Heaven,  
 Teaching, in silent eloquence to all,  
 Homage to God and deeds of love to man."<sup>1</sup>

His days passed without history. Rarely an event rippled their smooth flow. Like age everywhere, he revelled in memories—such, for example, as an interesting friendship with Charles Dickens, when he made the journey to the United States, which produced the *American Notes* in 1842 and *Martin Chuzzlewit* a little later. The venerable jurist sent him a greeting, with reference to it, in January, 1868, when the novelist was again in New York. Replying to it on 18th instant, Mr. Dickens wrote: "I have received your kind letter with sincere interest and pleasure, and I beg to thank you for it cordially. The occasion you bring back to my remembrance is as fresh and vivid as though it were of yesterday. Accept from me the accumulated

<sup>1</sup> Judge Lewis, like many another Quaker, became an Episcopalian and was elected one of the original Wardens of Christ Church, Williamsport, at its foundation, on February 8, 1841.

good wishes of five and twenty years, and believe me, Dr. Sir, faithfully yours,

“CHARLES DICKENS.”

A letter a year later from George W. Childs, who was then in Paris, is similarly suggestive. “My Dear Judge Lewis,” the letter began. “On the day of my leaving Philadelphia your very kind letter was placed in my hands, and I have many a time, amid my wanderings abroad, turned my thoughts homeward, and have felt how much I was indebted to you for the very great service you did me. It will always be one of the most agreeable recollections of my life, and I expect on my return to have handsomely printed your remarks and bind them up with the Ledger book in fine style, and present copies to such friends of yours as you may designate. I will include our mutual friend McMichael’s remark in regard to yourself, etc.” Then after references to the Judge’s trip abroad and his own, he closed with: “I return with a higher appreciation of our country and her institutions, and feel proud that I am an American. What a future we have before us. It is estimated that we will have one hundred millions of people in 1900. What then. I hope your health has been no worse this winter, which I understand has been mild. With high esteem, Very truly your friend

“GEO. W. CHILDS.”<sup>1</sup>

Almost exactly two years later, when the venerable jurist had passed his allotted three-score-and-ten, by three years, his friend, Childs, had occasion to chronicle his passing: “It is with great regret that we announce the decease of Hon. Ellis Lewis, formerly Justice and Chief Justice of the Supreme Court of the State of Pennsylvania. He had been in feeble health for a long period, but was able to go about his room until a few hours before his death on last Sunday afternoon [March 19th, 1871]. On that day, having expressed his readiness for the great change from mortality to immortality, he said quietly, ‘I believe I am dying now,’ and almost immediately afterwards fell back and ceased to breathe. Judge Lewis was widely and justly held in high esteem by his fellow-citizens throughout the State

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<sup>1</sup> Lewis Papers.

of Pennsylvania as a learned lawyer and jurist, and good man."<sup>1</sup>

On Wednesday, the 22d instant, a meeting of the Bar of Philadelphia was held at noon in the Supreme Court room, and, said the *Press*, "There was a large attendance of attorneys, especially of those who have obtained eminence in the profession; and the meeting was a fitting tribute to the private worth and professional attainments of the deceased, so long and so favorably known to the members of the Bar of Philadelphia, both as a jurist and a citizen." On motion of Judge A. V. Parsons, Chief Justice Thompson was chosen to preside, and Colonel Snowden and Hon. Henry M. Phillips were appointed secretaries. "Death has taken from us our late associate, Judge Lewis," said the Chief Justice. "It is true he was full of years, and I may say, full of honors, but the loss was none the less severely felt. I can say but little at this time. I knew him long and well, and some things coming into my own special knowledge I will refer to. — Many years ago (in 1832) on a cold December day, I met him first at Harrisburg as a member of the Legislature, prior to the amendment to the Constitution. The friendship commenced then was only cemented by time. I saw him the day before he died. Though he was not able to converse, his countenance lighted up when he saw me. He was celebrated for activity of mind, great reflective power and forethought. I have never known a more thorough capacity for reflection in any man whom I ever met. His reasoning was always sound, and his perceptions almost as quick as lightning. I remember the time Jackson's proclamation against nullification was brought by special messengers to Harrisburg. It was read amid great excitement, and in the debate that followed no more able speech was made than that of Judge Lewis, who said, if the acts of the nullifiers 'were not treason, they were crimsoned over with the hues of treason'—a remark which had a wonderful effect at the time. Afterward he introduced a bill for the abolition of imprisonment for debt, he having discovered many abuses by an actual inspection of the prisons. He did it at a time when opposition came from all quarters, and the passage of the act became one of the shining glories of his life."

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<sup>1</sup> A sketch followed.

After reference to other events of his life, he added: "No critic can condemn any opinion ever delivered by him. His head was clear, his heart was just,—two elements that should be inseparable from the judge. He approached just near enough to genius to still retain the power of common sense, which was characteristic of his judicial decisions. He was a worthy, genial, kind and trusty friend."

Judge Parsons followed, with all the warmth of early friendship: "A great man has fallen. It is no discredit to those now on the bench to say that Judge Ellis Lewis stood pre-eminent amongst all the lights of the Supreme Court, and his decisions are a monument to his fame." The first case he had ever tried was in connection with Judge Lewis, whose practice in the northern counties was very extensive. The Assembly of 1832-3 was a remarkable body, said he, "and for forty-six years there has been no such collection of talent as convened on that occasion, and Judge Lewis was the peer of any one upon the floor. Few men had more popularity; he was popular with the bench and bar because of his ability, and with the people because of his innate love of justice. He was a powerful advocate, formidable in the examination of witnesses, while before the jury his were some of the finest speeches ever delivered." "He was the friend of the oppressed," he continued; "and in the struggles in Tioga, Bradford and Lycoming Counties between the proprietors of land and the oppressed land holders," he took the people's side.

Judge Parsons then offered the following resolutions, which were unanimously adopted: "*Whereas*, at the advanced age of nearly seventy-three years, the Hon. Ellis Lewis, late Chief Justice of the Supreme Court of Pennsylvania, a gentleman who has filled many prominent political, official, and judicial stations in this Commonwealth with great efficiency, fidelity, as well as with singular satisfaction, not only to his friends, but to the bar and the whole people of this great Commonwealth; who was a man of unblemished moral reputation, and highly esteemed for his constant benevolence to the distressed and afflicted, his varied social qualities as well as his uniform Christian deportment, died at his residence in this city, on the 19th instant, full of years and honors, it is but proper that the



bar of Philadelphia, a place where he has resided for many years, should, in a public meeting, express in a fitting manner their appreciation of his excellence; therefore,

*"Resolved*, That in the death of this estimable citizen, distinguished lawyer, and upright judge, we feel the loss of a gentleman who by the purity of his judicial life, in the administration of justice in the various tribunals where he has been called to preside, and the profound legal learning which he has exhibited in all those various stations, as well as that earnest search after truth and justice in all the numerous causes which have been brought before him for adjudication, we say *a great man has died*.

*"Resolved*, That we deplore the death of the Hon. Ellis Lewis as one who by his research and varied learning has also contributed largely to the medical jurisprudence of the profession, to general literature, poetry, and science, and who at all times, had a heart filled with benevolence and kindness for the suffering and afflicted, which was ever open for their relief.

*"Resolved*, That we believe the bar of this State will ever recognize his kind, urbane, and gentlemanly deportment to all who, in years that are passed, have had the opportunity of practicing before him, and are ready in this sad hour to express their high appreciation of his character as a judge, of his moral worth, and as a Christian gentleman.

*"Resolved*, That a committee of seven be appointed by the chairman of the meeting to convey to the family of the deceased our deep sympathy with them in the loss they have sustained, and that a copy of these resolutions be presented at the same time.

*"Resolved*, That in testimony of our respect for the memory of our distinguished friend, we will attend his funeral this afternoon."

In seconding these resolutions, George W. Biddle, Esq., said that he had known Judge Lewis since 1851, and he came as near his "idea of a perfect judge" as any man with whom he had ever been acquainted. While profoundly learned in the law, he had a wonderful fund of practical common sense, and by it he could bring his great acquirements to support the justice of a case. His love, said Mr. Biddle, was for the law and for justice administered through it. "After his retirement from the bench, to which he might



have been returned for a term that would have carried him to the day of his death, he did not sit down in idleness, but devoted himself to the cultivation of his talents and the leading of an active life. He never concealed his opinions on any point. He gave the right to others, and was decided in the expression of his own." Mr. Biddle said that he and Judge Parsons had once had Judge Lewis for a client and unlike most lawyers, when clients, his ideas were as clear as to his own case as they were on others. He said the bar had, indeed, lost a great man, a man of high attainments, a great judge and a good citizen, and he desired to make this tribute to the worth of one who gave to the bench the benefit of his study and to the profession the benefit of an exemplary career.

Hon. William A. Porter spoke of the remarkable force of Judge Lewis' expressions, which were calculated to impress all who heard them, whether in speeches or conversation, for no one could hear him talk even without gaining ideas not soon to be forgotten. He referred to his rich sense of humor. He was always cheerful, never depressed in the presence of great responsibilities. He was not only laborious and learned, but had peculiar faculty for adapting the law to the duties of every day life. He was very considerate for the weak, but could lay strong and violent hold upon the strong man and ready debater, and would even suggest points to an attorney who seemed not to understand his case.

David Webster, Esq., one-time editor of the *Pennsylvania Law Journal*, and District-Attorney of Philadelphia, spoke warmly and with great feeling of the noble life of this jurist and Christian gentleman, whose career from printer's boy to Chief Justice, author of over three hundred opinions that were a permanent part of our law, was a proof of the beauty of American institutions.

Chief Justice Thompson appointed Hons. A. V. Parsons and William A. Porter, Attorney-General F. C. Brewster, and David Webster, George W. Biddle, Henry Green, of Northampton County, and Theodore Cuyler, Esqs., as the committee, to which, on motion of Mr. Cuyler, the officers of the meeting were added. The funeral was held at 302 South Fortieth Street in mid-afternoon, with the Rev. Dr. Yarnall, of St. Mary's Episcopal Church, and the



THE TOMB IN WOODLANDS, PHILADELPHIA



Rev. Dr. Rudder, of St. Stephen's, officiating.<sup>1</sup> Besides family, friends and the numerous representatives of the bar, were representatives of the Masonic Order, in a lodge of which in New York he had always held his membership, the St. Andrews Society, the Welsh Society and in especially large numbers the Typographical Society. The pall bearers were Chief Justice Thompson, Judges Ludlow and Parsons, and Dr. Jesse R. Burden. All of these, excepting relatives and close friends, honored the distinguished dead by acting as escort on foot to the great cemetery not far away on Woodland avenue, where the last rites were solemnized by the two rectors and the Masonic brother, Samuel C. Perkins, R. W. D. G. M.<sup>2</sup> And there amid the shaded slopes of Woodlands still rises a stately, but simple and dignified shaft, not unlike the simplicity and dignity of the life it recalls, on which is a cross and the legend:

ELLIS LEWIS  
May 16, 1798  
March 19, 1871

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<sup>1</sup> Mrs. Lewis survived her husband for some years, her death occurring on January 29, 1879. Miss Josephine Lewis, of Philadelphia, is the only surviving member of the Judge's family. The portrait of Judge Lewis by Francis, which was in the possession of his daughter, Mrs. Campbell, was willed by her, at her death, in 1899, to the Supreme Court for their rooms at Philadelphia, where it now hangs.

<sup>2</sup> *The Legal Gazette*, March 24, 1891.



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